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I N D E X

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1 (The following proceedings were held outside the
2 hearing of the jury on December 15, 2005 at 10:07 a.m.):)

3 THE COURT: I mentioned to them that perhaps we need
4 to review this situation relative to Ms. Lueken in terms of
5 the eyesight situation. That was one we didn't talk about
6 yesterday in terms of her claim as to the eyesight, so
7 whether or not that should remain in the case.

8 MR. STILLEY: Your Honor, I think that it should
9 remain in the case.

10 THE COURT: I know you think it should. I don't
11 have to ask that. But I wanted to deal with why it should
12 remain in the case in terms of those negligence factors we
13 talked about.

14 MR. STILLEY: Well, that's something that -- it's
15 serious. It is a serious bodily function. And when it's
16 rapid deterioration, a reasonably careful person should
17 realize there's probably a cause for that and they need to
18 have it checked out.

19 THE COURT: Basically she came down there and what
20 happened? What are the facts that you would say relate that
21 support this?

22 MR. STILLEY: Her eyesight deteriorated.

23 THE COURT: In terms of the glasses. You talk about
24 result. Let's start with she comes to school and where are
25 her glasses?

1 MR. SCHWARTZ: There was no testimony about that,
2 Judge. The only testimony was she said my eyesight got worse
3 while I was there. Her mother, which was called in the
4 plaintiffs' case, testified she took her to the eye doctor
5 twice while she was at the school. And she wrote it in the
6 reports. She wrote reports saying, went to the eye doctor
7 twice during the, what, two years she was there. There was
8 no testimony about her not having glasses. That was alleged,
9 but it wasn't testified to.

10 THE COURT: Yeah. There was an allegation, but I
11 don't recall any testimony about her not having her glasses,
12 just that her eyesight deteriorated.

13 MR. STILLEY: Well, my recollection is that the
14 defendant said she would have to be there a number of months
15 before she could be taken for her eyeglasses and to get some
16 care for it. And my contention would be that when somebody's
17 eyes, when they don't have their glasses or their eyesight is
18 deteriorating --

19 THE COURT: There is no testimony she didn't have
20 her glasses.

21 MR. STILLEY: Well, when her eyesight is
22 deteriorating, it's not something that needs to be done four
23 months or six months later, it needs to be done right then.

24 MR. SCHWARTZ: Your Honor, she came there on
25 June 23, 2000. The report that was put into evidence by the

1 plaintiff shows that her mother took her to the eye doctor on
2 March the 8th, 2001, which is less than a year from the time
3 she was dropped off at the school. That's -- most people
4 only go to the eye doctor once a year.

5 MR. STILLEY: But the testimony was that her
6 eyesight was deteriorating rapidly. And when there's a rapid
7 deterioration, we want to know why, and we want to get it
8 cured. So waiting a year is not enough.

9 MR. SCHWARTZ: There wasn't any evidence that she
10 told anybody that she had problems with her eyes or she asked
11 to go to a doctor or complained about it. She just said my
12 eyesight deteriorated. And that's so ambiguous anyway.

13 THE COURT: Yes. Fine. I'm going to direct a
14 verdict as to the claim, because I don't think you've got
15 enough evidence there to support any claim against any of the
16 defendants relative to that. But I knew that was one we did
17 not discuss yesterday evening and it was on my mind, so I
18 wanted to do that.

19 Now, do we have those instructions together at this
20 point in time?

21 MR. STILLEY: Your Honor, I think there was another
22 couple of them we didn't talk about. One was the safety pin.
23 I just want a ruling. I just want the record -- I think the
24 safety pin really should go to the jury too.

25 THE COURT: I don't think the evidence was there.

1 It wasn't clear that they knew that the pin -- did she say
2 she told them the pin was -- they called the doctor.

3 MR. STILLEY: She said that she was exhibiting signs
4 of serious distress.

5 THE COURT: Okay.

6 MR. STILLEY: Couldn't hardly even talk. And that
7 there was blood in her mouth and --

8 THE COURT: I don't recall her saying blood in her
9 mouth.

10 MR. SCHWARTZ: Your Honor, can I respond to this?

11 THE COURT: Sure.

12 MR. SCHWARTZ: Her testimony was that she swallowed
13 the safety pin, it went down into her stomach, and she later
14 excreted it. Now, there's no testimony that taking her to
15 the doctor would have been better for her. I mean, she's
16 not -- there's no evidence that she has any internal
17 problems, there's anything wrong with her stomach, or she's
18 having any kind of illness or whatever.

19 THE COURT: I mean, the medical, taking her to the
20 doctor would have avoided what? Would have avoided what
21 harm?

22 MR. STILLEY: Well, the pain of the pin going down.

23 THE COURT: What are they going to do? You think
24 they should have gone, taken her in and they would have done
25 surgery, opened her up? I mean, please.

1 MR. STILLEY: No, there's a hole right there to
2 stick something down in her mouth and close that pin up and
3 pull it back out.

4 MR. SCHWARTZ: The testimony was it went down into
5 her stomach. They would have to put her under and do
6 surgery. Is that better off than what happened?

7 THE COURT: That claim is gone also.

8 MR. STILLEY: Okay. We also got the Shari Lueken
9 cold shower. And the witness, Ms. Gerhardt, said that was a
10 treatment to calm her down. Not punishment, not discipline,
11 treatment to calm her down. And my position would be that's
12 negligent treatment. That's not the way to calm somebody
13 down even if they are out of line. I think the jury needs to
14 decide if that's negligent or not.

15 MR. SCHWARTZ: Your Honor --

16 THE COURT: You talking about the cold shower of
17 Ms. Woods?

18 MR. STILLEY: I'm talking about Shari Lueken's cold
19 shower.

20 MR. SCHWARTZ: Your Honor, Debbie Gerhardt denied
21 giving a cold shower to Ms. Lueken. So there was no
22 testimony that they gave it to her to calm her down. She
23 claims she had a cold shower. But that's -- that goes back
24 to intentional infliction of emotional distress. It's not
25 lack of failing to give medical care.

1 THE COURT: Fine. That's gone. That's an emotional
2 distress situation.

3 MR. STILLEY: Well, Your Honor, if I may. That
4 would cause physical discomfort. And as I recall, the
5 testimony of the witness --

6 THE COURT: Like the discomfort I'm feeling just
7 being here. Okay. Well, some things you just have to deal
8 with.

9 MR. STILLEY: That would cause physical discomfort.
10 As I recall the testimony of the witness was, I didn't do it,
11 but if I did, it was to calm her down. So it's a jury
12 question as to whether it happened and whether that was a
13 failure to use ordinary care.

14 THE COURT: Physical discomfort, does that get to
15 the level of an injury?

16 MR. STILLEY: You say in your order that's what you
17 said.

18 MR. SCHWARTZ: It's not an injury. You know, people
19 take cold showers on purpose sometimes. I mean, the
20 testimony was that sometimes if we had somebody who was out
21 of control, we would have to give them a cold shower to calm
22 them down and get --

23 THE COURT: That's gone. Okay. Let's go with these
24 instructions.

25 MR. SCHWARTZ: Judge, unfortunately we did not make

1 copies. We should have before we got started, but we have a
2 set to hand to you. But this is the only set.

3 THE COURT: Well, we can make other copies once we
4 get them together.

5 MR. SCHWARTZ: The verdict form is here. Those are
6 the verdict forms, Judge.

7 THE COURT: Okay. The first proposed instruction is
8 "Members of the jury, the instructions I gave at the
9 beginning and during the trial remain in effect and I'm now
10 giving additional instructions." That's going to be No. 1.
11 Any objection to that instruction?

12 MR. STILLEY: Your Honor, the standard ones I don't
13 have any objection to, any of the first.

14 THE COURT: Let's go through them. I mean, I know
15 they are standard ones, they are the boilerplate
16 instructions. There is no significant consequence, but I'm
17 going to go through them and number them and see if you have
18 an objection. If you do, so indicate, okay.

19 MR. STILLEY: Well, I can't make an effective
20 objection without having a copy. Can we make a copy first?
21 I do have some objections. I want to protect the record. I
22 want to make it as short as we can.

23 THE COURT: Fine. Michelle, would you make four
24 copies of these instructions as well as these verdict forms,
25 okay.

1 MR. SCHWARTZ: While she's doing that, just for the
2 record I'm going to file my written motions, but I think
3 you've already made your rulings on it.

4 THE COURT: Very well. This is defendants' motion
5 for judgment as a matter of law at the close of all the
6 evidence. The motion was discussed yesterday and The Court
7 made its rulings yesterday as well as this morning, and so
8 The Court is going to grant this motion in part and deny it
9 in part as specified on the record. So that will be that.

10 MR. SCHWARTZ: Judge, as an administrative matter,
11 do you need us to prepare a proposed judgment or order for
12 those things that are being dismissed by you prior to the
13 verdict?

14 THE COURT: It probably would not hurt, but I don't
15 know that we're going to have time to do that.

16 MR. SCHWARTZ: I'm not saying right now, but I mean
17 we can do it.

18 THE COURT: Fine.

19 MR. SCHWARTZ: We can do that later.

20 THE COURT: Yeah, I'd appreciate that. That would
21 be great. Okay. Why don't we discuss the time we need to
22 argue this case. How much time do you need, Mr. Stilley?

23 MR. STILLEY: Twenty minutes.

24 THE COURT: Very well. How do you want to divide
25 your 20 minutes?

1 MR. STILLEY: Twelve and eight.

2 THE COURT: What kind of warnings do you want?

3 MR. STILLEY: One-minute warning.

4 THE COURT: How much?

5 MR. STILLEY: One-minute warning.

6 THE COURT: Fine. What kind of warning you want,

7 Mr. Schwartz?

8 MR. SCHWARTZ: Can I have a warning halfway through
9 and five minutes?

10 THE COURT: Very well.

11 (There was a brief recess.)

12 THE COURT: Okay. The first instruction is the --
13 these are these boilerplate instructions which starts with:
14 "Members of the jury, the instructions I gave at the
15 beginning of the trial and during the trial remain in
16 effect." Any objection to that as No. 1?

17 MR. SCHWARTZ: No.

18 MR. STILLEY: No.

19 THE COURT: Proposed Instruction No. 2, "Neither in
20 these instructions nor in any ruling or remark that I have
21 made during the trial have I intended to give any opinion and
22 so forth relative to what the verdict should be." Any
23 objection to that?

24 MR. SCHWARTZ: No.

25 MR. STILLEY: No.

1 THE COURT: Proposed Instruction No. 3 is the
2 credibility instruction about deciding what the facts are,
3 what testimony you believe and what testimony you do not
4 believe and so forth and evaluating a witness. Any objection
5 to that as three?

6 MR. STILLEY: No.

7 MR. SCHWARTZ: No, sir.

8 THE COURT: Proposed No. 4 is the burden of proof,
9 the preponderance of the evidence or greater weight
10 instruction. Any objection to that as four?

11 MR. SCHWARTZ: No, sir.

12 MR. STILLEY: No.

13 THE COURT: The instruction that we have as No. 5,
14 I'll take that out, that will be the final instruction.
15 That's the instruction relative to the jury in terms of
16 conducting their deliberations. Now, we have some --

17 MR. SCHWARTZ: Your Honor, can I just ask a question
18 about that?

19 THE COURT: Sure.

20 MR. SCHWARTZ: At the bottom of that instruction it
21 has a parenthetical about reading the form. Does that stay
22 in there?

23 THE COURT: I'll leave it in there. It doesn't
24 matter. I'm not going to read it.

25 MR. STILLEY: Is that not going to be numbered then?

1 THE COURT: Yeah, but it's going to be the last
2 instruction. This is the final instruction I'm going to
3 give. So it's not in the right place, so we'll take that out
4 for the time being.

5 The next instruction we have in the packet relates
6 to claims of --

7 MR. SCHWARTZ: This is a withdrawal instruction,
8 Judge, that we were proposing.

9 THE COURT: Okay. This instruction reads: "The
10 claims of Jessica Deboi and Plaintiff Shari Lueken are
11 withdrawn from the case and you're not to consider such
12 claims in arriving at your verdict. The issue of emotional
13 distress damages is withdrawn from the case and you're not to
14 consider that. The issue of missed periods is withdrawn from
15 the case and not for their consideration. The issue of
16 constipation is withdrawn from the case and not to be
17 considered. The issue of sleep depravation is withdrawn from
18 the case." So you object to that, Mr. Stilley?

19 MR. STILLEY: Yes, for all the reasons previously
20 stated.

21 THE COURT: Yesterday, okay. Well, those objections
22 will be noted again. Overruled. That will be Instruction
23 No. 5.

24 MR. STILLEY: Actually, Judge, can I say one more
25 thing --

1 THE COURT: Go for it.

2 MR. STILLEY: -- in addition to everything before.
3 I think on the battery claim, that would be improper to say
4 that the emotional distress damage will be withdrawn, because
5 on a battery, whether or not -- the offense of touching is
6 sufficient. Even if there is no damages, it could be a
7 nominal award, but I think that this could confuse the jury
8 into thinking that there wouldn't be a basis for finding in
9 favor of the plaintiff, for example, on the poking unless
10 there was some injury.

11 MR. SCHWARTZ: Well, Your Honor, I will not -- if it
12 will satisfy The Court, I won't argue that. But I think that
13 we are entitled to tell the jury that the emotional
14 distress -- there are a lot of other emotional distress that
15 was complained about that's not being submitted to the jury,
16 and I think we're entitled to get a withdrawal on that. But
17 I will to satisfy the concern of counsel, agree that I will
18 not argue to the jury that they should not consider the
19 emotional response.

20 THE COURT: As to the batteries. You can go ahead
21 and argue it then.

22 MR. STILLEY: Here's what I'd like to do. Let's say
23 the issue of emotional distress damages is withdrawn from the
24 case with respect to the negligence counts.

25 MR. SCHWARTZ: That will really confuse them.

1 What -- I don't know if they'll even know what that means.
2 Because they don't know what counts are in until they see
3 this.

4 MR. STILLEY: Well, you'll be reading this to the
5 jury at this point in time and they will very quickly figure
6 that out.

7 THE COURT: Well, I'll tell you what, I think it's
8 just simpler if you argue for -- if you're asking for
9 emotional distress as to the battery and indicate that, that
10 that instruction does not apply to that, and it's not going
11 to be opposed by Mr. Schwartz.

12 MR. STILLEY: Is there a way that we can put this in
13 and make it less obvious, but say that the issue of emotional
14 distress damages is withdrawn? Hey, how about this, with
15 respect to the verdict directors on the negligence, put that
16 sentence in those directions so that it will not be just as a
17 general direction, general instruction to the jury, so
18 they'll know what count it goes with.

19 THE COURT: Listen, you just argue for it and
20 indicate to the jury that it does not apply to those. And
21 Mr. Schwartz has indicated that he's not going to argue
22 otherwise. I think that that will be sufficient. Because
23 there's so many other issues there that relate to that. So
24 I'm going to give that as Instruction No. 5 noting your
25 objections and suggestions and overruling.

1 Proposed Instruction No. 6 is, "The definition of
2 the term negligent or negligence as used in these
3 instructions means the failure to use that degree of care
4 that an ordinarily careful person would use under the same or
5 similar circumstances." Any objection to that? You had
6 something as a parent or something, didn't you, Mr. Stilley?

7 MR. STILLEY: Yes, parent as opposed to person. We
8 reserve that objection, otherwise it's satisfactory.

9 THE COURT: No. That's overruled. That's No. 6.

10 Okay. Now, let's see what goes in these -- this
11 would be -- it doesn't have a number on this one where it
12 says instructions blank through blank and general
13 instructions one through --

14 MR. SCHWARTZ: This is a bridge, Judge. Does this
15 need a number? We can put one on. I can reprint. I can
16 give her the disk.

17 THE COURT: We'll make that Instruction No. 7.
18 Okay. So that would be -- first of all, we're going to use
19 Verdict A for Ms. Woods. So that would go in that blank for
20 Verdict A. And the specific instructions relative to her
21 would be eight, nine, ten, and 11. So the first blank would
22 be eight through 11. And the general instructions are one
23 through six. And the last blank would be Verdict A.

24 Now, let's look at these specific instructions eight
25 through 11 relative to Ms. Woods. Battery claim, Proposed

1 Instruction No. 8, on the claim of Plaintiff Jamie Kaufmann
2 Woods for battery against Defendant Andrea Hill, your
3 verdict -- is Andrea Hill still in the case? Did we leave
4 her in?

5 MR. SCHWARTZ: On this claim only.

6 THE COURT: Okay. Yeah, against Defendant Andrea
7 Hill, your verdict must be for Plaintiff Jamie Kaufmann Woods
8 if you believe: First, Defendant Andrea Hill intentionally
9 pushed or caused others to push -- okay, the offensive
10 conduct and it would be offensive to a reasonable person.
11 Any objection to that instruction as No. 8?

12 MR. SCHWARTZ: Yes, Your Honor. We would object to
13 this instruction for the record at this time. It's vague and
14 ambiguous. It's a roving commission. There is not
15 sufficient evidence to support it. Based on the testimony
16 that was given, there was absolutely no injury caused by
17 this. There's not sufficient evidence that it's an offensive
18 contact. And I don't think it's in the proper form. I think
19 that should be -- under the MAI it should be required that
20 there be a finding of bodily injury.

21 THE COURT: Mr. Stilley.

22 MR. STILLEY: Your Honor, I don't have an objection
23 to it of course. I think it's pretty much straight out of
24 the MAI except that it's adapted to the facts of this case.

25 THE COURT: Well, that's what The Court sees. The

1 Court is concerned that even though there is a physical
2 contact where no injury is caused, that does not place a
3 plaintiff in a position where they should not be able to gain
4 relief unless there is injury. So I'm going to overrule
5 those objections, give that instruction as eight.

6 Proposed Instruction No. 9 is Ms. Woods same
7 instruction but it's against Defendant Betty Wills in terms
8 of the poking, intentionally poked Ms. Woods, and contact was
9 offensive, would be offensive to a reasonable person. That
10 is Proposed Instruction No. 9. Any objection to that?

11 MR. SCHWARTZ: Yes, Your Honor, we would object to
12 Instruction No. 9 for the same reasons as Instruction No. 8.
13 In addition, as a matter of law, this poking, which was
14 demonstrated in court and described by the plaintiff herself,
15 is not an offensive contact. Not every touch between two
16 human beings is offensive contact. The testimony was that
17 Ms. Wills to make a point tapped her chest bone with her
18 index finger -- or tapped Ms. Woods' chest bone with her
19 index finger. There was no pain or suffering or harm caused
20 by it. I don't think it's sufficient to go to the jury on
21 that basis. And I think also for the same reasons I said in
22 Instruction No. 8, you need to have some bodily harm and the
23 finding by the jury of bodily harm.

24 THE COURT: Well, the Court's opinion is the same
25 relative to this bodily harm situation in terms of injury.

1 Anything you wish to say, Mr. Stilley?

2 MR. STILLEY: No objection.

3 THE COURT: That's No. 9. Okay, that's No. 9.

4 Proposed No. 10 is Ms. Woods' claim of negligence
5 against Betty Wills relative to her hearing condition. And
6 that, you know, you have the instruction there that she
7 sustained damage relative to not obtaining treatment and so
8 forth and so on. That's Proposed No. 10. Any objection to
9 that?

10 MR. SCHWARTZ: Yes, Your Honor, there is not
11 sufficient evidence to support this instruction, and I don't
12 think it correctly states the law. The case -- the Eighth
13 Circuit case that this is based on was a case where a child
14 was hurt on a playground or in a ball field and injured his
15 eye, and the teacher or school person failed to take the
16 student to the -- to medical treatment. As a result there
17 was medical testimony that as a result the student lost the
18 use of his eye because of the time lag in not getting quick
19 treatment.

20 This is not anywhere close to that case. This is a
21 case where the plaintiff's only testimony was that she was
22 brought to school by her parents. Her parents didn't bring
23 her hearing aids. She asked her parents to give her the
24 hearing aids. They didn't send them to her. They came to
25 visit her and didn't bring her hearing aids.

1 So ultimately her own testimony was the school took
2 her to be tested, she got her hearing aids, and they enhanced
3 the sound system at church to help her with her hearing.
4 There is no evidence that they did anything wrong whatsoever.
5 I don't think this can be submitted in this way. If this can
6 be done in this way, every school can be sued any time any
7 child has any complaint about they didn't get something in
8 time. It really I think opens up Pandora's box, and I don't
9 think it's the proper form. There is absolutely no form for
10 this sort of thing because it's so rare.

11 MR. STILLEY: No objection.

12 THE COURT: Okay. Your objection is overruled,
13 Mr. Schwartz. This is No. 10.

14 Proposed Instruction No. 11 is a damages instruction
15 for Ms. Woods. Basically it's saying if you find in favor of
16 them, you must award her a sum that will fairly and justly
17 compensate her for damages that you believe she sustained.
18 And that's a direct result of the conduct submitted in
19 Instructions 8, 9, and 10 in the blanks. Any objection to
20 that?

21 MR. STILLEY: No objection.

22 THE COURT: Now, here we go again. These -- the
23 next set of instructions, and we'll have to put something
24 else there. But this would be -- the last one was
25 Instruction No. 11.

1 And Proposed Instruction No. 12 is the bridge
2 instruction relating to the claims of Plaintiff Tracey Brazil
3 Ozuna relative to battery and negligence. So, first of all,
4 it's going to be Verdict Form B in that last blank, and then
5 we've got Instructions No. 13, 14, 15, and 16. So that would
6 be 13 through 16 in the first blank, and general instructions
7 one through seven. So we'll need to do this when we put this
8 instruction blank at the top so it's in form with the others.

9 Now, Proposed Instruction No. 13 relative to
10 Ms. Ozuna. This is a battery claim against Deborah Gerhardt
11 relative to the paddling of Ms. Ozuna. Any objection to that
12 instruction?

13 MR. SCHWARTZ: Yes, Your Honor, we would object to
14 this instruction on the basis that the undisputed testimony
15 of Ms. Ozuna was that she -- well, first of all, the
16 undisputed testimony was that her parents were told in
17 advance about the paddling policy, and that her testimony was
18 after she was paddled she went home. She told her parents
19 about the paddling. And then they brought her sister and her
20 back to the school. And I think under the law, under the
21 instruction for the affirmative defense, consent, as a matter
22 law that shows consent and so therefore we're entitled to a
23 directed verdict on that basis. So I think that that would
24 be my objection.

25 THE COURT: Okay. Well, the next instruction is

1 that affirmative defense instruction that you're speaking of
2 relative to the parents giving consent to this paddling
3 situation. So I'm going to give Instruction No. 13. Do you
4 have any objection to that, Mr. Stilley?

5 MR. STILLEY: None other than those that I stated
6 yesterday.

7 THE COURT: Okay. And I guess those that you stated
8 relate to Instruction No. 14, which is the next instruction,
9 which is the defendants' affirmative defense that the parents
10 gave consent to any such paddling.

11 MR. STILLEY: That is correct.

12 THE COURT: Well, that objection is noted. The
13 blank there will have 13 in it. So we'll give 13 and 14.

14 Instruction No. 15 relates to Ms. Ozuna's claim of
15 negligence against Betty Wills and Deborah Gerhardt relative
16 to her asthma condition.

17 MR. SCHWARTZ: Your Honor, I would make the same
18 objection to this as I made to the instruction regarding the
19 hearing aids, which was Instruction No. 10. There was no
20 evidence to support this. She said that she asked a staff
21 member for her inhaler when she was out at the ball field.
22 She's never testified she talked to Debbie Gerhardt or Betty
23 Wills about it. And there was no evidence of any injury from
24 this. She said she wanted her inhaler. And she also said
25 that she didn't know if her parents had sent it to her.

1 That's all it was. That can't turn into -- this is not a
2 claim. It can't be. I mean, she had the ability to ask her
3 parents for it. She could write to her parents. She could
4 talk to them on the phone. And there's no evidence that she
5 ever went to medicine call and said, I need my inhaler, I
6 want an inhaler. Or she went to Debbie or Betty or anyone
7 else who had the authority to get her an inhaler.

8 THE COURT: Mr. Stilley.

9 MR. STILLEY: No objection.

10 THE COURT: We talked about this yesterday and about
11 the supervisory responsibility, so I'm somewhat reluctant to
12 give it, but nevertheless I'm going to give it anyway. So
13 that's Instruction No. 15. I'm going to keep that in the
14 case.

15 Now, Proposed Instruction No. 16 is the damages
16 instruction for Ms. Ozuna. And it speaks about fairly and
17 justly compensating her for damages she sustained as a result
18 of the conduct relative to instructions -- I guess that's 13
19 through 15. Wait a minute. Oh, 13 and 15. I think that's
20 what should go in there, 13 and 15. Because 14 was a
21 converse -- well, affirmative defense instruction.

22 Okay. Proposed Instruction No. 17.

23 MR. SCHWARTZ: Judge, do you have those proper ones
24 now? Did somebody hand those to you?

25 THE COURT: Yes, Mr. Briggs handed those to me.

1 Okay. I'll put this one in first. This has got a blank on
2 top of that. Let's throw that away. So that would be
3 Instruction No. 17, the bridge instruction for Ms. Teasley.
4 So that would be 17 and 18.

5 MR. SCHWARTZ: I'm sorry, Judge.

6 THE COURT: I'm mean, 18 and 19 rather. It would be
7 the next two instructions following this. Instructions 18
8 through 19, and general instructions one through seven apply
9 to the claim of Erika Teasley for negligence. Use verdict
10 form -- that should be a Verdict Form C, okay.

11 Now, let's go to Instruction No. 18 on the claim of
12 Erika Teasley for negligence against Defendant Deborah
13 Gerhardt. Your verdict must be for Ms. Teasley if you
14 believe -- this is the same negligence instruction. This is
15 the toothache situation. Any objection to that instruction?

16 MR. SCHWARTZ: Yes, Your Honor. We would object. I
17 would object based on the same basis that I objected to
18 Instruction Nos. 10 and 15. The evidence was that she
19 complained about a toothache. She was given Tylenol and
20 other things and they took her to the dentist. This does not
21 fit within the Siteman case or any of the Eighth Circuit case
22 law on this. This is not an injury that they failed to
23 treat. In fact, they took her to the dentist and she was
24 treated.

25 MR. STILLEY: No objection.

1 THE COURT: Fine. The Court is going to give that.
2 Instruction No. 19 is a damages instruction for Ms. Teasley
3 and talks about fairly and justly compensating her as a
4 direct result of the conduct submitted in the previous
5 instruction, which would be 18 would go in that blank.

6 So those are all the instructions other than the
7 final instruction directing the jury as to their
8 deliberations, which would be No. 20.

9 Now, are there any other or further instructions
10 that are proposed before we go with this last instruction?

11 MR. SCHWARTZ: No, Your Honor.

12 THE COURT: How about that?

13 MR. STILLEY: No, Your Honor.

14 THE COURT: Okay. Well, No. 20 then is the final
15 instruction about conducting their deliberations and the
16 rules that they must follow in terms of electing a foreperson
17 and the unanimity and so forth. Any objection to that
18 instruction?

19 MR. SCHWARTZ: About No. 20?

20 THE COURT: Yeah.

21 MR. SCHWARTZ: No objection.

22 MR. STILLEY: No objection, Your Honor. And let me
23 say something with respect to your last question. The
24 plaintiffs, of course, do reserve their objections to the
25 lack of punitive damages instructions and the other, any

1 other instructions mentioned yesterday.

2 THE COURT: Very well. The Court's ruling from
3 yesterday will remain the same. I think we're going to have
4 to change some of those blanks where I put one through seven,
5 it's one through six in terms of the boilerplate
6 instructions. So I'll make that change.

7 MR. SCHWARTZ: I thought you did.

8 THE COURT: I'm putting the one with the correct
9 caption for Ms. Kaufmann Woods, so I'll go through the others
10 also.

11 MR. SCHWARTZ: Do you have the verdict forms, Judge?

12 THE COURT: Yeah, we're going to go over those
13 verdict forms next.

14 MR. SCHWARTZ: Okay.

15 THE COURT: I made those corrections to indicate one
16 through six as the general instructions relative to each
17 plaintiff.

18 Now, let's take a look at these verdict forms.
19 Verdict Form A. Now, these relate to Ms. Woods' claims. Any
20 objection to the Verdict Form A?

21 MR. STILLEY: Yes.

22 THE COURT: Well, we don't need all these people
23 signing. It's just the foreperson.

24 MR. SCHWARTZ: Judge, I think you've got an old
25 version. We corrected that.

1 THE COURT: Let's see if I have a new form. Okay.
2 That's the old. Now I got the new and improved. Okay. Any
3 objection to Verdict Form A?

4 MR. STILLEY: No, Your Honor.

5 MR. SCHWARTZ: No objection.

6 THE COURT: Okay. Michelle, let me have the
7 stapler, I'm going to staple these two pages as well as I'm
8 going to staple all these instructions together also when we
9 send them back.

10 Okay. Verdict Form B relative to Ms. Ozuna. That's
11 a two pager. Any objection to that verdict form?

12 MR. SCHWARTZ: I don't object.

13 MR. STILLEY: Your Honor, actually I think we may
14 have a little problem here because we've got a request to
15 assess damages but it doesn't say -- well --

16 MR. SCHWARTZ: You know what, the only --

17 MR. STILLEY: No, that's okay. Leave it.

18 MR. SCHWARTZ: Judge, we just have a spacing -- I
19 think something in the conversion from Word to Word Perfect
20 unfortunately there's a spacing problem on the top of Verdict
21 Form B where it says Betty Wills. It drops down to the next
22 line and that might be confusing to the jury. I think we can
23 probably fix that pretty easy. Your clerk has this already
24 on her -- she printed this out.

25 THE COURT: What are you talking about, the note up

1 under the --

2 MR. SCHWARTZ: Right below. It says on the claim of
3 Plaintiff Tracey Ozuna for negligence against Defendant Betty
4 Wills.

5 THE COURT: Well, I'll tell you what, I will just
6 put an arrow.

7 MR. SCHWARTZ: Okay.

8 THE COURT: That Ms. Wills' name, Betty goes before
9 the Wills.

10 MR. SCHWARTZ: I just know sometimes the spacing in
11 all these different paragraphs.

12 THE COURT: I understand. I don't think it's
13 overwhelming except just the first name is out of line with
14 the last name. And just put an arrow with it and it goes
15 right there.

16 Now, any other problem, objection to Verdict Form B?

17 MR. STILLEY: No, Your Honor.

18 THE COURT: Okay. What about Verdict Form C?

19 MR. STILLEY: It's fine by me.

20 MR. SCHWARTZ: It's fine.

21 THE COURT: Okay. Fine. 11 o'clock we'll bring
22 them in and we'll commence.

23 MR. SCHWARTZ: Can I just have a procedural
24 question?

25 THE COURT: Sure. I'll read them first. You want

1 me to read them first?

2 MR. SCHWARTZ: I was going to ask. Whatever you do
3 is fine.

4 THE COURT: I can read them first, then you can deal
5 with the instructions.

6 MR. SCHWARTZ: Okay.

7 THE COURT: That will give you an opportunity.
8 That's the way they do it in the state. I never did like the
9 way they do it in federal court for the most part, reading
10 them last. I think it's better if I read them first.

11 MR. SCHWARTZ: Okay.

12 THE COURT: Any problem with that?

13 MR. STILLEY: Your Honor, that's the way I like it
14 too.

15 THE COURT: Fine. I'll read them first at
16 11 o'clock. We'll check on the jurors and do it. What else?

17 MR. SCHWARTZ: Do you send all the exhibits back or
18 they have to ask for them?

19 THE COURT: They are going to have to ask for them.

20 MR. SCHWARTZ: Okay.

21 THE COURT: No point in belaboring this if they
22 don't need them.

23 MR. SCHWARTZ: I understand.

24 MR. STILLEY: Your Honor, I would ask to send them
25 back anyway. Otherwise I'm going to have to ask them to ask.

1 THE COURT: You can ask them to ask. But you see,
2 we'll have to take a look at these. Some of these exhibits I
3 guess -- I don't know if they were allowed in for some
4 limited purpose. I mean, I see those medicine logs. They
5 probably all can go back. You know, I'd have to --

6 MR. SCHWARTZ: There were some redactions needed on
7 some things.

8 THE COURT: There were some things we needed
9 redactions on. So if you ask them to ask for things, that's
10 going to be a little time if they ask for them in terms of
11 making the redactions. There were some that are not going
12 back in their full flower.

13 MR. STILLEY: Are there any that are going to be
14 completely kept out that you can think of?

15 THE COURT: I'll make that ruling when I get to it.

16 MR. STILLEY: Okay.

17 THE COURT: Okay.

18 (Court in recess from 10:55 a.m. until 11:02 a.m.)

19 THE COURT: Good morning, ladies and gentlemen of
20 the jury.

21 THE JURORS: Good morning.

22 THE COURT: You may be seated. Ladies and gentlemen
23 of the jury, the instructions that I gave at the beginning of
24 the trial and during the trial remain in effect. I'm now
25 going to give you some additional instructions. You must, of

1 course, continue to follow the instructions which were given
2 earlier as well as those that are given now. You must not
3 single out some instructions and ignore others because all
4 are equally important. This is true even though some of
5 those I gave at the beginning of the trial and during the
6 trial are not repeated here.

7 The instructions that I'm giving you now are in
8 writing and I'll send them back to you in your jury room. I
9 emphasize, however, that this does not mean they are more
10 important than the earlier instructions. Again, all
11 instructions, whenever given and whether in writing or not
12 must be followed.

13 Neither in these instructions nor in any action,
14 ruling or remark that I've made during the course of the
15 trial have I intended to give any opinion or suggestion what
16 your verdict should be. That is entirely up to you.

17 In deciding what the facts are, you may have to
18 decide what testimony you believe and what testimony you do
19 not believe. You may believe all of what a witness has said,
20 only part of it, or none of it. In deciding what testimony
21 to believe consider the witness' intelligence, the
22 opportunity the witness had to have seen or heard the things
23 testified about, the witness' memory, any motives the witness
24 may have for testifying a certain way, the manner of the
25 witness while testifying, whether the witness said something

1 different at an earlier time, the general reasonableness of
2 the witness' testimony, and the extent to which the testimony
3 is consistent with other evidence that you believe.

4 In deciding whether or not to believe a witness,
5 keep in mind that people sometimes hear and see things
6 differently and sometimes forget things. You need to
7 consider, therefore, whether a contradiction is an innocent
8 misrecollection or a lapse of memory or an intentional
9 falsehood. And that may depend upon whether it has to do
10 with an important fact or only a small detail.

11 In these instructions you're told that your verdict
12 depends upon whether you find that certain facts have been
13 proved. The burden of proving a fact is upon the party whose
14 claim or defense depends upon that fact. The party who has
15 the burden of proving a fact must prove it by the greater
16 weight or the preponderance of the evidence.

17 To prove something by the greater weight or
18 preponderance of the evidence is to prove that it is more
19 likely true than not true. It is determined by considering
20 all of the evidence and deciding which evidence is more
21 believable.

22 If on any issue in the case the evidence is equally
23 balanced, you cannot find that that issue has been proved.
24 The greater weight or preponderance of the evidence is not
25 necessarily determined by the greater number of witnesses or

1 exhibits a party has presented.

2 You may have heard of the term proof beyond a
3 reasonable doubt. That is a stricter standard which applies
4 in criminal cases, it does not apply in civil cases such as
5 this. You should, therefore, put it out of your minds.

6 The claims of Plaintiff Jessica Deboi and Shari
7 Lueken are withdrawn from the case and you're not to consider
8 such claims in arriving at your verdict.

9 The issue of emotional distress damages is withdrawn
10 from the case and you're not to consider such issue in
11 arriving at your verdict.

12 The issue of missed periods is withdrawn from the
13 case and you're not to consider such issue in arriving at
14 your verdict.

15 The issue of constipation is withdrawn from the case
16 and you're not to consider such issue in arriving at your
17 verdict.

18 Lastly, the issue of sleep depravation is withdrawn
19 from the case and you're not to consider that in arriving at
20 your verdict.

21 The term negligent or negligence as used in these
22 instructions means the failure to use that degree of care
23 that an ordinarily careful person would use under the same or
24 similar circumstances.

25 Instructions 8 through 11 and the general

1 instructions one through six apply to the claims of Plaintiff
2 Jamie Kaufmann Woods for battery and negligence. Use Verdict
3 A to return your verdict on these claims.

4 On the claim of Plaintiff Jamie Kaufmann Woods for
5 battery against Defendant Andrea Hill, your verdict must be
6 for Plaintiff Jamie Kaufmann Woods if you believe:

7 First, Defendant Andrea Hill intentionally pushed or
8 caused others to push Plaintiff Jamie Kaufmann Woods to the
9 ground.

10 And second, Defendant Andrea Hill thereby caused a
11 contact with the plaintiff which was offensive to plaintiff.

12 Third, such contact would be offensive to a
13 reasonable person.

14 On the claim of Plaintiff Jamie Kaufmann Woods for
15 battery against Defendant Betty Wills, your verdict must be
16 for Jamie Kaufmann Woods if you believe:

17 First, Defendant Betty Wills intentionally poked
18 Plaintiff Jamie Kaufmann Woods.

19 And second, Defendant Betty Wills thereby caused the
20 contact with plaintiff which was offensive to plaintiff.

21 And third, such contact would be offensive to a
22 reasonable person.

23 On the claim of Plaintiff Jamie Kaufmann Woods for
24 negligence against Defendant Betty Wills, your verdict must
25 be for Plaintiff Jamie Kaufmann Woods if you believe:

1 First, Defendant Betty Wills was able to appreciate
2 the severity of plaintiffs' hearing condition.

3 Second, Defendant Betty Wills had the ability to
4 obtain treatment.

5 And third, had Defendant Betty Wills obtained
6 adequate treatment, the condition would have been remedied.

7 And fourth, Defendant Betty Wills was thereby
8 negligent.

9 Fifth, as a direct result of such negligence
10 Plaintiff Jamie Kaufmann Woods sustained damage.

11 If you find in favor of Plaintiff Jamie Kaufmann
12 Woods then you must award plaintiff such sum as you believe
13 will fairly and justly compensate plaintiff for damages you
14 believe plaintiff sustained as a direct result of the conduct
15 of defendant as submitted in Instruction Nos. 8, 9, and 10.

16 Instructions 13 through 16 and general instructions
17 one through six apply to the claims of Tracey Brazil Ozuna
18 for battery and negligence. Use Verdict Form B to return
19 your verdict on these forms.

20 On the claim of Plaintiff Tracey Brazil Ozuna for
21 battery against Defendant Deborah Gerhardt, your verdict must
22 be for Tracey Brazil Ozuna if you believe:

23 First, Defendant Deborah Gerhardt intentionally
24 caused Plaintiff Tracey Brazil Ozuna to be paddled.

25 And second, defendant thereby caused a contact with

1 plaintiff which was offensive to plaintiff.

2 And third, such contact would be offensive to a
3 reasonable person.

4 Unless you believe that Plaintiff Tracey Brazil
5 Ozuna is not entitled to recover by Instruction No. 14, which
6 reads:

7 Your verdict on the previous Instruction No. 13,
8 must be for Defendant Deborah Gerhardt if you believe that
9 Tracey Brazil Ozuna's parents by words or conduct consented
10 to the acts of defendant and the reasonable consequences
11 thereof.

12 On the claim of Plaintiff Tracey Brazil Ozuna for
13 negligence against Defendant Betty Wills and Deborah
14 Gerhardt, your verdict must be for Plaintiff Tracey Brazil
15 Ozuna if you believe:

16 First, Defendant Betty Wills and/or Defendant
17 Deborah Gerhardt was able to appreciate the severity of
18 plaintiff's asthma condition.

19 And second, Defendant Betty Wills and/or Deborah
20 Gerhardt had the ability to obtain treatment.

21 And third, had Defendant Betty Wills and/or
22 Defendant Deborah Gerhardt had obtained adequate treatment
23 the conditions would have been remedied.

24 And fourth, the Defendant Betty Wills and/or Deborah
25 Gerhardt were thereby negligent.

1 And fifth, as a direct result of such negligence
2 Plaintiff Tracey Brazil Ozuna sustained damages.

3 If you find in favor of defendant -- plaintiff,
4 rather, Tracey Brazil Ozuna, then you must award plaintiff
5 such sum as you believe will fairly and justly compensate
6 plaintiff for any damages you believe plaintiff has sustained
7 as a direct result of the conduct of defendant as submitted
8 in Instruction Nos. 13 and 15.

9 Instructions 18 through 19 and general instructions
10 one through six apply to the claim of Plaintiff Erika Teasley
11 for negligence. You may use Verdict Form C to return a
12 verdict on this claim.

13 On claim -- on the claim of Plaintiff Erika Teasley
14 for negligence against Defendant Deborah Gerhardt, your
15 verdict must be for Plaintiff Erika Teasley if you believe:

16 First, Defendant Deborah Gerhardt was able to
17 appreciate the severity of Plaintiff Erika Teasley's
18 toothache.

19 And second, Defendant Deborah Gerhardt had the
20 ability to obtain treatment.

21 Third, had Defendant Deborah Gerhardt obtained
22 adequate treatment, the condition would have been remedied.

23 Fourth, Defendant Deborah Gerhardt was thereby
24 negligent.

25 Fifth, as a direct result of such negligence,

1 Plaintiff Erika Teasley sustained damage.

2 If you find in favor of Plaintiff Erika Teasley then
3 you must award plaintiff such sum as you believe will fairly
4 and justly compensate plaintiff for any damages you believe
5 plaintiff had sustained as a direct result of the conduct of
6 defendant as submitted in Instruction No. 18.

7 In conducting your deliberations and returning a
8 verdict, there are certain rules that you must follow.
9 First, when you go to your jury room you must select one of
10 your members to act as your foreperson. That person will
11 preside over your deliberations and speak for you here in
12 court. It is your duty as jurors to discuss this case with
13 one another in your jury room. You should try to reach
14 agreement if you can do so without violence to individual
15 judgment because your verdict must be unanimous.

16 Each of you must make your own conscientious
17 decision but only after you have considered all of the
18 evidence, discussed it fully with your fellow jurors, and
19 listened to the views of your fellow jurors. Do not be
20 afraid to change your opinions if the discussion persuades
21 you that you should. But do not come to a decision simply
22 because the other jurors think it is right or simply to reach
23 a verdict. Remember at all times that you are not partisans,
24 you are judges, judges of the facts. Your sole interest is
25 to seek the truth from the evidence in the case.

1 If you need to communicate with me during your
2 deliberations, you may send a note to me through the marshal,
3 bailiff, or court security person signed by one or more of
4 you jurors. I'll respond as soon as possible either in
5 writing or orally here in open court. Remember that you
6 should not tell anyone, including me, how your votes stand
7 numerically. Your verdict must be based solely on the
8 evidence and the law which has been given in the
9 instructions. Your verdict must be unanimous. Nothing that
10 I've said or done or any ruling or remark that I've made have
11 I intended to suggest what your verdict should be, that is
12 entirely for you to decide.

13 These verdict forms, this A, B, and C that we've
14 talked about are here, and they are merely the written notice
15 of the decision that you reach in the case. And you'll take
16 these forms along with the instructions back to your jury
17 room. And when each of you have agreed upon your verdicts,
18 the foreperson can then fill out the form, verdict forms, and
19 sign and date them and advise the bailiff or court security
20 person that you're ready to return to the courtroom. When
21 you've completed your work, you'll have to return the forms
22 and the instructions to the courtroom.

23 So now we'll have the argument. You ready,
24 Mr. Stilley?

25 MR. STILLEY: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. STILLEY: May it please The Court, counsel.

3 Ladies and gentlemen of the jury, thank you very much for
4 your time here. I really appreciate this. I know this is a
5 considerable burden to take time out of your lives to come
6 here and to listen to this.

7 Now, this case has been made considerably simpler
8 than I thought it was going to be and actually simpler than I
9 wanted it to be. It's been narrowed down. We've got three
10 individuals here. There's three individuals, three counts of
11 battery, and three counts of negligence.

12 And we've got direct testimony on this side saying
13 that the facts establish that the plaintiffs have proved
14 their case. We've got testimony on the other side saying,
15 no, it's not true, they have not proved their case, it's not
16 true. So we have the classic credibility, classic swearing
17 contest.

18 What we have to do in this case, what your job is,
19 is to find out who am I going to believe and who am I going
20 to disbelieve, who is telling the truth, who is more credible
21 in this case.

22 Now, we have some exhibits in this case, not a whole
23 lot, just a few. And they are not going to come back to your
24 deliberations unless you ask for them. I'm going to request
25 that you ask for those. Since there's not very many, there's

1 no reason not to just ask for them all at once, have them
2 brought back to you so you can take a look at that because
3 there's some important things. And I'm going to tell you
4 about a few of those things in my closing statement.

5 But, remember, when we present a case in the court
6 of law, what I'm trying to do is paint a picture, but I can't
7 paint a perfect picture. I can't paint a complete picture.
8 I can put a stroke here and a stroke there and try to make
9 that picture come together. And no matter how I try, the
10 minutes that I have, I cannot give you all the information
11 that can be gleaned by looking at the evidence that was
12 introduced in this case and the documents that bear on the
13 issues in this case.

14 Now, concerning credibility, let's think about this.
15 I want to go to a country song. I'm probably sure some of
16 you are country music fans or at least listen to a little bit
17 of it. There's a country song that says, all my Xs live in
18 Texas, that's why I reside in Tennessee. Now, Ms. Wills, one
19 of the defendants here, one of the chief defendants here, she
20 says the reason that I reside in Tennessee, the reason that
21 we quit, ceased operations of Mountain Park is because of my
22 husband's health. That's the reason.

23 Now, let's stop and think about this. What the
24 evidence shows is that Sam Gerhardt stated under oath in this
25 case, it cost us \$500 a month. Now, he tried to bicker a

1 little bit, but what he said in writing and signed was our
2 cost is \$500 a month. They charge \$1,200 a month. That
3 leaves 700. How many students do we have? About 250, maybe
4 a little over 250. Folks, you can do the math. That's about
5 \$2 million a year profit.

6 Now, we've also got testimony that Bob and Betty
7 Wills generally stay together, that's normal, husband and
8 wife, they stay together. They flew back and forth from
9 Florida to Betty Wills' air strip in Florida back to
10 Missouri. They flew back and forth on a regular basis for
11 many years before the place closed down.

12 The day-to-day operations were done by Sam and
13 Debbie Gerhardt. Now, let's think about this. Would a
14 normal rational person give up a two million a year income
15 stream because --

16 MR. SCHWARTZ: Objection, Your Honor, this is beyond
17 the evidence.

18 MR. STILLEY: It's credibility, Judge. It's
19 credibility.

20 THE COURT: I have no idea where you are going with
21 this that has to do with battery and negligence.

22 MR. STILLEY: It's down to who is telling the truth
23 and who is not.

24 THE COURT: I understand that. I understand you're
25 talking about credibility is always in the case.

1 MR. STILLEY: Your Honor, can I move on maybe.

2 THE COURT: Go ahead.

3 MR. STILLEY: Ladies and gentlemen, I'll tell you
4 another little story. I like stories. I'm not the best
5 story teller, I must confess, but I told you, this is not my
6 bag, this is not my cup of tea. I do federal criminal
7 defense, I do tax work, I do securities litigation. I did
8 this for these young ladies. But it's helpful to tell
9 stories sometimes.

10 And my wife and I have had occasion to go to Russia,
11 actually twice. We discovered an orphanage there. We go to
12 Russia. We went in February and July of last year -- no,
13 maybe it was this year. Anyway --

14 MR. SCHWARTZ: Your Honor, I object to this, it's
15 beyond the evidence. It's not proper argument.

16 MR. STILLEY: Your Honor, I'm just trying to tell a
17 little story.

18 THE COURT: Well, hurry up and tell the story. I
19 have no idea where you're going.

20 MR. STILLEY: Ladies and gentlemen, all of us, I
21 think all of us have in our hearts the desire to help people,
22 and that's what these defendants said. All of us, we might
23 have a different thing, it might not be going to an
24 orphanage, it might be something else, but all of us have in
25 our hearts a desire to help other people.

1 You heard Andrea Hill testify that she was trying to
2 help these girls, and you heard the questions that I asked.
3 I was not asking those to be silly, because I believe a lot
4 of that was the truth, that she wanted to help those kids.
5 Let's think about this. Let's think about her testimony.
6 She was there for two or three years, and she immediately
7 turned around and became staff. \$300 a month. Worked for
8 about ten years and was making \$550 a month when she left.

9 MR. SCHWARTZ: Your Honor, I object to this, it's
10 not proper argument. It's outside the evidence.

11 THE COURT: Go ahead.

12 MR. STILLEY: She testified that not only did she
13 not take Jamie Woods and push her to the ground, she didn't
14 do that. She didn't do that to her. She didn't do that to
15 anybody else. She didn't even see it done. Wait a minute,
16 folks. You got 250 kids here or thereabouts, and they are
17 supposedly troubled teens. They are bad kids. What's the
18 chances that you can work in this place tremendous hours a
19 day for ten years, and you never see a kid have to be taken
20 to the ground? No matter how good you are, you have to take
21 a kid to the ground. Let me suggest, you may take this with
22 a grain of salt. Don't believe that.

23 Now, let's think about something else too. I'm
24 going to go through these issues with you. And some of them
25 are little and some are big. One of them is poking the

1 chest. One of them is paddling. I think we all agree that
2 the paddling was so severe that she trembled, could barely
3 sit down, and it hurt for a week. That's pretty serious.
4 Poking the chest, I think we can all agree that that's a lot
5 less. Let me ask you this. If these individuals sitting
6 here were going to lie to you, could they not make up a
7 bigger and better lie than that?

8 Ladies and gentlemen, let's start with the battery
9 on Tracey Ozuna, her claim of battery. Here's what the
10 defendants say, we didn't do it, but if we did, we got
11 permission. Now, they had forms for that, did they not? Did
12 you see any forms? When you ask for all the exhibits, look
13 and see if any of those forms are in there. See if the
14 writing is there. Now, we've also got a handbook. We've got
15 a handbook that they said it's a Parent/Student Handbook,
16 that's what it said on the front of it, Parent/Student
17 Handbook. The parents got it, student didn't. I want you to
18 look at the handbook and see how long it takes you to figure
19 out why the students didn't get copies of that handbook. Was
20 it because as Mr. Gerhardt testified we just like the oral
21 tradition? Is that why we don't have the copy of the
22 agreement with the parents?

23 Ladies and gentlemen, I would suggest that that's
24 not really what's going on. I want you to look in that
25 handbook and see what was told to the parents, and you will

1 know why it was not given to the students. That told the
2 parents never keep secrets. Don't keep secrets. If you keep
3 secrets, that's considered voluntarily taking your child out
4 of the school. And you owe us for a year. You look at
5 documents and see if they don't say that.

6 The handbook says be prepared for it, your kids are
7 going to tell you, they beat me, they abuse me, they starve
8 me.

9 MR. SCHWARTZ: Objection, Your Honor, that is not in
10 evidence. The handbook is not in evidence. This is
11 completely outside the evidence, and it's not -- it's
12 completely untrue.

13 MR. STILLEY: That's Exhibit 2, it was admitted.

14 MR. SCHWARTZ: Your Honor, it was admitted for a
15 limited purpose.

16 THE COURT: Well, go ahead.

17 MR. STILLEY: Thank you, Judge. Let's think about
18 this. They say we got a five swat max. This young lady says
19 I got eight swats very hard. They say our rules say we keep
20 a record of the paddlings. We don't have a record of it, we
21 didn't do it. But if we did it, we had permission. What
22 about the paddle? Not a big paddle, a little paddle. Do you
23 have the paddle? No, we don't have the paddle. Can't bring
24 that paddle.

25 Ladies and gentlemen, I will submit that's a true

1 story. You listened to the witness. You saw the witness.
2 And you saw how much that did to her. After all these years
3 later you saw the pain to relive that. What did she get in
4 trouble for? They testified, she's a good girl, she was well
5 behaved. She sat on her bunk. Why did she have to sit on
6 her bunk? She did. That was the rule. She was on the top
7 bunk. She needed to get her pillow off the floor. Tried
8 five minutes to get somebody's attention so she could get
9 permission. And then jumps down and gets the pillow and gets
10 back on the bed, and gets eight swats. She's was in pain for
11 a week.

12 Ladies and gentlemen, let me tell you something
13 about the law. The law allows in cases of battery -- now,
14 don't get confused, on the battery instruction, that's where
15 you get the information on that. If someone -- if it's an
16 offensive touch, say, on the poking the chest and you don't
17 find a lot of damage, there's something called nominal
18 damages. If you find it's appropriate, you can put down a
19 dollar. For whatever reason, you can put down a dollar.
20 But, ladies and gentlemen, I want you to believe these young
21 ladies. When Jamie says I was poked in the chest, well, we
22 got the admission from Ms. Wills that they did that. She was
23 poked in the chest, and that was offensive. That hurts her.
24 To this day that is painful for her.

25 Ladies and gentlemen, I respectfully submit that she

1 should be believed. She should be credited. And I want you
2 to look. How much is that worth? How much is it worth what
3 these young ladies went through?

4 Ms. Teasley, this is negligence. There is a tooth.
5 Once again we got two stories. Didn't know about it. It
6 took too long to get into the dentist. We got 250 girls. Do
7 you ever have emergencies? No, no, no, that really didn't
8 come up, didn't have emergencies. Once again, if somebody
9 gives you an inconsistent story about why they didn't do
10 something, we need to question it. And you don't have to be
11 a brain surgeon to figure out that if your tooth breaks out
12 and you take it in a cup and you show it to somebody, it
13 hurts. That's not a good thing. You need dental care and
14 you need it then. You don't need it two or three months
15 later. And you can look at the medicine logs. Look at those
16 logs and see how they would give her medicine by their
17 accounts for the toothache. Look and see.

18 Now, you can look at those logs and you can draw
19 your own conclusion. I pointed some things out about those,
20 but even based on what they say, they were negligent in
21 dealing with Ms. Teasley and that caused her tremendous pain.

22 As I told you, this is credibility. It's about --

23 THE COURT: One minute.

24 MR. STILLEY: Thank you, Judge. This is
25 credibility. This is about painting a picture. This is

1 about looking at little things. We have a story about, a
2 consistent story of honesty and openness and truthfulness on
3 this side. What do we have on the other side? Now, I know
4 we got limited things we're focusing on, but what was the
5 story of Debbie Gerhardt versus Julie Gerhardt on worm
6 medicine? I want you to think about that. What did Debbie
7 Gerhardt say about cold showers? It's not punishment, it's
8 not correction, we just calm her down.

9 Now, my time is just about up here. I want you to
10 keep this in mind. You heard about some letters that said, I
11 love it here. Ms. Wills said -- we told kids until you don't
12 want to leave, you're not ready to leave. Any time a child
13 is under 18 and anything that they write saying that they
14 love the place, it's suspect. They've already been told,
15 here's how you get out, say you love the place. What have
16 they done? Set up a system so that these kids will have to
17 say things they don't believe in order to avoid what to them
18 is the heart of Mountain Park. And then they bring those
19 stories from these kids back in and say we didn't do them
20 wrong, they loved us. It's not true.

21 And I request that you take a look. Look at the
22 verdict forms. Find in favor of these plaintiffs on each
23 count and put a number in there that you find is right and
24 right to compensate them for the damages they've suffered.
25 Thank you.

1 THE COURT: Mr. Schwartz.

2 MR. SCHWARTZ: Thank you, Your Honor. May it please
3 The Court, counsel. Members of the jury, I too want to thank
4 you for your time and patience this week. I know you've been
5 working very hard because it's much harder to sit and listen
6 than it is to talk. So the people who are working the
7 hardest are the court reporter and jury.

8 Now, you heard a lot of evidence in this case. But
9 Judge Shaw has instructed you that there are only a few
10 issues left for you to consider. The Court has instructed
11 you that you are not to consider in this case, first of all,
12 any of the claims made by -- and this is Instruction 5, which
13 The Court has read to you, any of the claims made by Jessica
14 Deboi or Shari Lueken. Those are out of the case.

15 You're not to consider any emotional distress
16 damages. That's been withdrawn from the case.

17 You're not to consider any claims about missed
18 periods, that's out. Out of the case.

19 You're not to consider anything about constipation.

20 You're not to consider anything about claims of
21 sleep deprivation.

22 You don't need to worry about any of that. You
23 heard a lot about it. It's out. You don't need to worry
24 about it, consider it anymore, that's what The Court has
25 instructed you.

1 Now, what's left? What Mr. Stilley talked about is
2 left. There is a claim about the paddling, which we'll talk
3 about. There's a claim about the poking. There's a claim by
4 Jamie Kaufmann that Andrea Hill pushed her down. And then
5 there's the claim -- there's a claim that Andrea Hill -- I
6 mean, Jamie Kaufmann didn't get her hearing aids. There's a
7 claim that Tracey Ozuna didn't get her inhaler. And there's
8 a claim that Ms. Teasley didn't get to go to the dentist
9 timely. That's what's left. That's all that's left. So let
10 me talk about the issues that are left in the case.

11 Let me talk about Tracey Ozuna's claim first. She's
12 claiming that Debbie Gerhardt instructed the employee to swat
13 her. That's the claim. Now, you heard about the discipline
14 policy at Mountain Park. And you heard about the types of
15 corrections that they try first before they swatted anyone.
16 You heard that they tried other things. And you heard people
17 testify that they got corrections like that. They got
18 dessert taken away or had to write lines or something. Now,
19 all schools have to have a discipline policy. Different
20 people can have different philosophies about how to
21 discipline their children. Different schools have different
22 philosophies how to discipline children that are there.

23 And in this case as in most schools, the parents are
24 told in advance, this is our policy, and this is how we do
25 it. And they have to agree to it before they could bring

1 their children to this school.

2 But at Mountain Park they didn't just swat somebody
3 for no reason. They tried other things first. And if there
4 was someone who wasn't changing their ways because of the
5 other things, then they had a swatting policy. But the
6 testimony you heard was that this paddle was about 12 inches
7 and that this lady held it with two hands. Well, my hands
8 aren't very big, but if you're holding a paddle with two
9 hands and it's 12 inches, there wouldn't be much left of that
10 paddle to cause the kind of damage that Ms. Ozuna claims that
11 she had. You wouldn't be able to get the kind of leverage
12 that she claims.

13 In any event, even if this were to have occurred,
14 and we say it didn't and I'll show you why it didn't. I'll
15 be able to prove to you it didn't happen. But even if it
16 did, her parents were told about it in advance, all the
17 parents were told that they use this type of discipline.
18 And, in fact, before they brought Tracey to the school, they
19 brought her sister Michelle. She was there first. She's not
20 a defendant here. She hasn't testified here. She's not a
21 plaintiff here. She did not testify here. But she was
22 there. Then they brought Tracey there. And she claims the
23 first time she was there, and she was there twice, you'll
24 remember. First in December, December of '95 until April
25 '96, and she came back in February '97. It's the first time

1 that she says she was paddled.

2 Her own testimony was that she went home, she told
3 her parents what had happened, and they brought her back.
4 And at the same time, or shortly thereafter they brought her
5 sister back. Now, if her parents thought whatever happened
6 to her at Mountain Park was terrible, they would not bring
7 three of their daughters to this school. They wouldn't have
8 brought her back. They had to have an agreement with
9 Mountain Park as to what they were doing. And The Court has
10 instructed you that you cannot find against Debbie Gerhardt
11 on this battery claim if you believe -- if you believe that
12 Tracey Ozuna's parents by words or conduct consented to
13 these -- to the act of the defendant and the reasonable
14 consequences, you must find in favor of Defendant Deborah
15 Gerhardt. That is the judge's instructions.

16 And there isn't any question that her parent, she
17 testified she told her parents about it. There isn't any
18 question that her parents brought her and her sister back to
19 the school. By words or conduct if they consent, you must
20 find in favor of Deborah Gerhardt.

21 Now, putting all that aside, this did not happen.
22 And let me show you the evidence that proves it did not
23 happen. First of all, Deborah Gerhardt didn't even have
24 authority to order the swatting. She couldn't have ordered
25 it. Betty Wills was the only one. They took this very

1 seriously at Mountain Park. Betty Wills was the only one who
2 could order swatting. She was the only one who could do the
3 swatting, whoever did the swatting when she was there. And
4 the testimony even from Ms. Ozuna was that Betty Wills was
5 there at the time. There's no question about that.

6 She claims that Laura Mathews swatted her. She
7 could not have. Betty Wills was the only one who did
8 swatting at that time.

9 She testifies it was done in the dorm. They didn't
10 do swatting in the dorm. They did not do swatting in the
11 dorm. You heard Andrea Hill and Julie Gerhardt, they were
12 there at the same time. They both testified they never saw
13 anyone swatted. They could not have seen anyone swatted
14 because it wasn't done in the dorm, it was done in Ms. Wills'
15 office only.

16 I'll just mention one thing about this handbook. I
17 don't think this handbook is really important to this case,
18 but since Mr. Stilley brought it up, there was no handbook at
19 the time that Tracey Ozuna says that she was swatted, so it's
20 not relevant to that at all.

21 Now, also the testimony is that they would have made
22 a record of it. There's no record of it. It did not happen.
23 But most of all, we know this would have been against the
24 philosophy of the school. They didn't just swat girls for no
25 reason. They would not have swatted her because a pillow

1 fell on the floor. They would not do that at all. That is
2 completely against the mission of this school.

3 Shari Lueken testified that she lied and cheated
4 when she was at the school. She didn't get swatted.

5 Now, all of this is based only on the word of Tracey
6 Ozuna. There are no witnesses. Now, Mrs. Gerhardt --

7 THE DEFENDANT: Ten minutes.

8 MR. SCHWARTZ: Thank you, sir. She could have made
9 up a story about this. But she was very honest. She said
10 Tracey was a good girl, there was no reason to swat her.

11 Finally, the most telling piece of evidence is a
12 letter written in Tracey's own hand that she wrote to
13 Ms. Debbie after she left.

14 THE JURORS: The screen is not on.

15 MR. SCHWARTZ: You haven't seen anything I've showed
16 you? This is the letter, and this is Exhibit E. And you can
17 ask for Exhibit E, and I suggest you read this letter because
18 this is critical. She is not at the school at the time she
19 writes this letter. This is after she's left the school the
20 second time in 1998. She left the school the end of '97, the
21 second time she left. And she writes this a few months later
22 to Ms. Debbie. And in the letter she says, I miss everyone
23 at Mountain Park. And in the letter she says, tell all the
24 girls in the dorm I miss them, and the only thing I don't
25 miss is the ten-minute showers and getting up at 5:15. Now,

1 how could someone that is hurt that bad that she claims she
2 was swatted say that she doesn't miss anything except getting
3 up early and taking a short shower?

4 She even says in here, tell mama and papa, Mr. and
5 Mrs. Wills, to come and stay with us. And she says, I love
6 you for everything you've done too, Ms. Debbie, the person
7 she is suing on this battery claim.

8 Now, she says she made this up. Her testimony is I
9 made this up because I wanted to get in the good graces
10 because I thought my parents might take me back again. Well,
11 she wouldn't have to write this detailed letter if that's
12 what she wanted to do to get into the good graces. She talks
13 in here about her life, her boyfriend, all kinds of things
14 going on in her life. That doesn't make sense. You decide.
15 Is this a fabrication? Is this a manipulation that was done
16 before anyone thought about filing a lawsuit? Is this the
17 manipulation before anyone hired a lawyer and decided to file
18 a lawsuit? That's what she's claiming. You decide where the
19 manipulation is.

20 Now, I'm going to quickly go through some other
21 things. This claim about Ms. Wills poked Jamie. You have to
22 find that's an offensive contact in order to find battery.
23 This is not offensive contact. She was just trying to get
24 the girl's attention. That is not -- it shouldn't be in
25 court. This is not an offensive contact.

1 Jamie Woods says Andrea Hill pushed her. Well,
2 Andrea Hill denied it. And I thought quite frankly, and you
3 decide, she was a very credible witness. She's not employed
4 there anymore. She's a very credible witness. Again, this
5 is based purely on Jamie Woods' uncorroborated testimony. No
6 witnesses.

7 If you're not sure, you've got one person saying one
8 thing and another person saying another thing, The Court's
9 instructions say if you can't decide, that means they haven't
10 proved their case, and if they haven't proved their case, you
11 must find for my clients. They have the burden of proof. So
12 if you get back to the jury room and you're saying, I just
13 can't decide, you have to find for the defendants, that's The
14 Court's instructions.

15 Now, Jamie Woods also says, I didn't get my hearing
16 aids, they should have got me my hearing aids. Well, you
17 know, she testified that her parents took her there when they
18 went past Taco Bell and dropped her there without her hearing
19 aids. She talked to them on the phone. She asked for her
20 hearing aids. She didn't get them. They came and visited,
21 they didn't bring the hearing aids. Brother Gerhardt
22 testified the parents are supposed to do the regular
23 maintenance type things, take their kids to the regular
24 annual visits, checkups and that sort of thing. That's the
25 parents' job.

1 Well, what happened? What did the school do? Well,
2 ultimately when she wasn't getting the hearing aids from her
3 parents, the school took her. The school took her and took
4 care of the hearing aids. They also helped change the sound
5 system to help her in the church. So they did more than the
6 parents. They helped her. I don't know why she's suing for
7 that.

8 Now, also the most telling thing on this hearing aid
9 issue is that she wrote a letter too. Now, she says --
10 again, she says this is a manipulation, she was still there
11 when she wrote the letter. But what does she say in the
12 letter? She says, first I want to thank you Debbie and
13 Brother Gerhardt for being so patient with me through the
14 whole hearing thing.

15 THE COURT: Five minutes.

16 MR. SCHWARTZ: Thank you, sir. She's thanking them
17 for taking care of the hearing problem. Now she's suing for
18 it. You decide. She didn't have a lawyer then, she wasn't
19 trying to get money in court. Was that the manipulation or
20 is the manipulation going on now?

21 Now, Ms. Teasley has this claim about the toothache.
22 The treatment, the medical logs, which there's no question
23 that these were done at the time. This shows, and you can
24 look at this in the jury room, this is Exhibit BB, that she
25 complained for the first time about tooth pain on March the

1 15th, and then she complained about colds and headaches, and
2 all the time they are giving her medicine. And then she
3 complains about a toothache on April 11th and on April
4 15th -- April 11th, by the way, is a Friday. On April 15th,
5 two business days later, and this is in her note, Exhibit KK,
6 where she went to the dentist, April 15th she goes to the
7 dentist. There's no claim about that at all. She complained
8 the second time April 11th. A few days later they take her
9 to the dentist.

10 All these claims -- oh, one of the claims about
11 Tracey Ozuna, she said she didn't get her inhaler. There is
12 no evidence that Debbie, Ms. Wills knew anything about an
13 inhaler. There is no evidence they had an inhaler for it.
14 She didn't go to medicine call. She didn't ask them to get
15 the inhaler. She said she talked to some staff members
16 during PE or something. Again, her parents didn't send the
17 inhaler.

18 But they took these children to doctors all the
19 time. If she wanted to get it, she could have asked for it
20 and clearly they would have given it to her, they were giving
21 medicine all the time.

22 There is no damages in this case. They haven't
23 shown any evidence of damages. These ladies are doing fine.
24 They are very productive citizens and they've moved on with
25 their lives.

1 Now, I want to talk very briefly about the verdict
2 form. Here is what the verdict form says. I don't want you
3 to be confused. There are three verdict forms. You have to
4 write plaintiff or defendant in each line on each count.
5 It's very simple, on Verdict A at the top you write Andrea
6 Hill, then you write Betty Wills and Betty Wills in the
7 second two lines. Verdict B, you write Betty Wills on the
8 top line. Deborah Gerhardt. You don't need to worry about
9 damages. You find for the defendant, you fill in defendant's
10 name, you are done. Foreperson signs it, turn it in. That's
11 all you have to do. Deborah Gerhardt goes at the bottom of
12 that form. And then on Verdict C, Deborah Gerhardt, there's
13 only one count. Verdict C is for Erika Teasley. Verdict B
14 is for Tracey Ozuna. That's what it looks like.

15 Now, I'm going to sit down in a minute. Mr. Stilley
16 is going to get a chance to get back up. I want you to know,
17 I don't get to talk last. I told you before, he gets to talk
18 first, he gets to talk last. I don't want you to think
19 because I don't get up and contradict what he says that means
20 I agree with it, I probably don't.

21 When you get back in the jury room, don't leave your
22 common sense in the hallway. Think about the documents that
23 were created back at the time, not what is just said here in
24 court, the contemporaneously prepared documents, the
25 documents prepared before anyone thought about hiring a

1 lawyer and file a lawsuit and trying to get money. That's
2 what you should be looking at. That's common sense. And I
3 ask that you return a verdict for my clients, the defendants.

4 MR. STILLEY: Ladies and gentlemen, first thing I
5 want to do is to say counsel for the defense is correct on
6 the first thing that he said. He said consider no other
7 claims except to determine who is telling the truth. Because
8 basically that's what we have to help us to decide who is
9 telling the truth and who is not telling the truth.

10 Now, I want to start here with Tracey Ozuna about
11 the story that it just couldn't have happened that way, we
12 didn't do that, that's just impossible, we tried other things
13 for discipline. Well, the testimony is diametrically
14 opposed. You're going to have to decide, somebody is going
15 to tell the truth here. They said we didn't paddle in the
16 dorms. We only give five licks. That's impossible. She's
17 saying they violated their own rules. How is this kid
18 supposed to enforce the rule in their favor when they didn't
19 get a copy of the rules? How would they know that the
20 spanking is supposed to take place somewhere else? How do
21 they know that eight is the limit? What was she told? If
22 you resist in any way, for each time you resist you get
23 another lick, so stand there and take it.

24 Once again, I heard from the defense counsel, and I
25 wrote it, down, even if it did happen, we didn't do it, but

1 if it did, it's okay, parents, the parents sent her back.
2 She was paddled age of 12, and she went home, and her parents
3 sent her back. Once again we're getting down to this oral
4 tradition. Oh, Bob Wills says, I called everybody. I talked
5 to them. Did he say he talked to those parents? No. He
6 just said I called and talked to folks.

7 Do we have any evidence at all about the reaction of
8 the parents? No. We don't have the writing, although we
9 know that there were writings made, we don't have that.
10 Isn't it possible that the parent could be upset with
11 somebody and nonetheless for whatever reason send a young
12 person back? In our society isn't it true that we sometimes
13 punish parents for the neglect or the mistreatment of their
14 own children? It's not a defense. You can't say the parents
15 said it was okay. If you abuse a child, if you do wrong to a
16 child, there is still remedy to be had for that.

17 The parents, let's think about this too, in his
18 handbook you're going to see, the parents are told, these
19 kids are liars. They don't say it exactly that way, but when
20 you start looking all through there, that's what they are
21 saying, all these kids are liars, don't believe what they say
22 about what's going on here, so they can deny, deny, deny to
23 the parents too. And isn't it possible that a parent might
24 not believe something and nonetheless allow their child to be
25 harmed again or put in harms way again? That's not good

1 enough. That doesn't work.

2 Debbie couldn't order swats. Now are we to believe
3 this, that because -- what was the chain of command at
4 Mountain Park? What did they say about that? Basically that
5 every man is for himself. But now they are saying, no, no,
6 no, that couldn't have happened, it was against our rules so
7 it didn't happen. In essence it didn't happened, so it
8 didn't happen.

9 Now, the defendants will tell you, we're just
10 thinking about the Lord, trying to help these kids become
11 Christians. I'm a Christian, I'm all 100 percent in favor of
12 being a Christian. Now, let's stop and think about this. In
13 war, money is the worst of all contraband because it commands
14 everything else. If you had a \$2 million a year income
15 stream --

16 MR. SCHWARTZ: Objection, Your Honor, this has
17 already been excluded.

18 THE COURT: Sustained.

19 MR. STILLEY: Okay. Now, let's look on these
20 letters. Both these letters were written while these
21 children were less than 18. Defendants themselves admit that
22 you weren't ready to leave until you said you didn't want to
23 leave. They got information from the parents. And you heard
24 testimony, these kids were in stark terror of going back.
25 Isn't that good enough reason? Now, maybe you shouldn't say

1 things that you don't really believe, but is that not terror
2 enough to make somebody write a letter like this? And then,
3 of course, they get this hurled back in their face, you said
4 these things, you wrote this letter and you didn't say
5 anything about this.

6 Jamie had some -- needed hearing aids and they say
7 that's not our fault, the parents are supposed to do that.
8 Now, what did we hear from Marilyn Lueken and Shari Lueken?
9 Shari Lueken got in trouble for stealing shampoo. What
10 happened when Ms. Lueken when to pick up Shari? She got
11 about three years supply of shampoo. It didn't matter that
12 you had the goods, you had to have permission to use them.

13 Now, let's think about this, when you got somebody
14 behind barbed wire fences, they are totally dependent on you
15 for everything that they get, then you have an obligation,
16 that person that has custody has an obligation to make sure
17 that child is kept with the things that they need. You can't
18 just shove it off on somebody else and say somebody else.
19 No, you have your own obligation.

20 The defendants have told us, look, these girls did
21 good, they succeeded, everything is all right. Well, look at
22 Jessica Deboi here, she's just doing fine. I didn't jump up
23 and object to that. Although didn't have any evidence that
24 the girls did well afterwards, let me say something, these
25 girls succeeded in spite of Mountain Park, not because of

1 Mountain Park. When anything -- when we tried to say
2 anything about the condition; physical, mental, or
3 otherwise --

4 MR. SCHWARTZ: Objection, Your Honor. Objection.

5 THE COURT: Overruled. Go ahead.

6 MR. STILLEY: They objected. They don't have a
7 right --

8 MR. SCHWARTZ: Objection, Your Honor.

9 THE COURT: They have a right to object. Overruled.

10 MR. STILLEY: Yes. But they don't have a right to
11 come back and say the condition of the girls was fine when
12 there is no evidence to show that. If they want evidence,
13 they shouldn't -- if they want evidence, they have the
14 remedies to get that evidence in.

15 Ladies and gentlemen, there is suggestion on the --
16 from the defense on the poking of the chest. Well, that's
17 just not enough. Ladies and gentlemen, there's not much left
18 here. These girls have been through a long battle. What
19 they've got, whatever it is, it's very important to them.
20 And I would respectfully request that you go back there and
21 you take those forms, and on each one of them you mark in
22 favor of plaintiffs to say we believe you, we believe what
23 you said.

24 THE COURT: One minute.

25 MR. STILLEY: We do not give credit to the

1 statements -- you don't need to worry about the others. Just
2 worry about these and say we give you credit that you were
3 telling the truth. You heard Jamie, her testimony, that she
4 was desperate for the approval of her parents. She wanted
5 those things so bad. I want you to look, and look in the
6 exhibits that come back to you and look at that handbook and
7 see what was -- and also think about Marilyn Lueken's
8 testimony about what they did, about building a relationship
9 with the parents and students as opposed to tearing it down.

10 Thank you so much.

11 THE COURT: Very well. Michelle, here are the
12 instructions and the verdict forms, take the jury back, see
13 what they want for lunch, let them commence their
14 deliberations.

15 (Jury sent to deliberate at 12 p.m.)

16 (The following proceedings were held outside the
17 hearing of the jury at 12:18 p.m.):

18 THE COURT: Exhibit 2 was admitted. There was some
19 discussion on the record of that being the proper witness.
20 The Court assumed at that time that it would be further
21 referred to, and that it would be admitted by some proper
22 person. I don't think that ever came up, but yet it still
23 was admitted. What about the handbook did come in to
24 testimony?

25 MR. STILLEY: Your Honor, I asked Ms. Wills numerous

1 questions about that, and she responded to numerous questions
2 about the contents of the handbook. And, wait a minute,
3 there's another thing, and that is Sam Gerhardt testified
4 that it was his master's thesis, and he testified about when
5 they set it up and why they set it up that way and why it was
6 not given to the students and the history of it and just all
7 kinds of things about that. He even talked about some of the
8 rules that were involved in it. So we just went around and
9 around on it.

10 THE COURT: Okay. Well, there was a long
11 conversation I know with Gerhardt. I don't think it was ever
12 asked to be admitted again. I did admit it. I was trying to
13 see whether or not there were other references to it that
14 would allow it to be appropriate to go back to the jury. I'm
15 inclined to let it go back to the jury. Why shouldn't I? It
16 was referred to by several witnesses from the defense as well
17 as the plaintiff and it was admitted.

18 MR. SCHWARTZ: This is a really big document. They
19 could be reading this for a long time. It's about -- it's a
20 book. And my understanding, and I could have misunderstood,
21 but my understanding of your ruling was that you were
22 admitting it for a limited purpose, and that he still needed
23 to lay the foundation for if he was going to use it. It was
24 referred to, but it was never read to the jury, it was never
25 shown to the jury.

1 THE COURT: Yeah, what about the handbook -- how
2 many pages is the handbook?

3 MR. STILLEY: I've got it right here.

4 MR. BRIGGS: Eighty-five pages.

5 THE COURT: It's an 85-page document. What about
6 the document is relevant in terms of going in that was
7 discussed?

8 MR. STILLEY: Your Honor, let me explain it like
9 this. I would have been terrified to ask you to admit a
10 document that you already admitted. I believe the law on
11 that says that once a document is admitted, it can be
12 referred to by either party, it's in the case.

13 So I know it's a long document. I'm hesitant to
14 take things out because I don't want to make the jury
15 suspicious about why they don't have all the pages or
16 anything like that. And clearly it was referred to
17 repeatedly. And you were asking me to move the thing along,
18 and I did try. So I didn't want to trot up there every
19 little bit to --

20 THE COURT: My concern is it is a long document and
21 there may be things that are contained in the document that
22 may be inappropriate to go back to the jury. What, if
23 anything, is inappropriate? Otherwise I'll look at maybe we
24 can make eight copies and send it back.

25 MR. SCHWARTZ: The problem, Judge, I think is that

1 it was referred to, but in general. I mean, it wasn't read
2 from. It's just -- we're giving the jury a lot of stuff
3 that's not part of this case.

4 THE COURT: That's what I'm talking about. So what
5 parts of it are not part of the case?

6 MR. SCHWARTZ: Most -- I mean, well, I don't think
7 any of it is, but --

8 MR. STILLEY: Your Honor, my position on that for
9 plaintiffs would be if they wanted to excise parts of it then
10 they needed to do that some other time if they objected to
11 parts of the documents. They didn't make that objection,
12 it's waived.

13 MR. SCHWARTZ: Judge, I think there is a difference
14 between having something in evidence and sending it to the
15 jury.

16 THE COURT: Well, I've always made that distinction
17 in that regard in terms of something being admitted and then
18 going to the jury. And generally that distinction has been
19 that things that were not discussed in any way or part of the
20 evidence of the case.

21 MR. SCHWARTZ: I mean, I would think if this was so
22 important, he would have showed it to somebody and maybe read
23 from part of it or something he wanted to point out and
24 direct the jury's attention to, and he didn't do that. Do
25 you want to see it?

1 THE COURT: Yes. Let me take a look at it. You all
2 can't seem to make this call. I mean, I am inclined to let
3 some portions of it go back.

4 Counsel, is there any objection to the other
5 exhibits by anybody? Maybe we can send those on back and the
6 jury can have those and they can get going with those.

7 MR. SCHWARTZ: There are some that were supposed to
8 be redacted, which I don't think they've been redacted yet.

9 THE COURT: Well, were there? I mean, two of the
10 letters, once they were put up, they were put up in full.

11 MR. SCHWARTZ: No, Judge, there was a couple of
12 plaintiffs' exhibits that you said he could put into evidence
13 but only redacted versions of them that were not shown to the
14 jury.

15 MR. STILLEY: Your Honor, my understanding is we
16 were going to take that up later. I do remember the
17 redaction question.

18 THE COURT: I remember. But I'm asking now which
19 exhibits are those? What can we send back to the jury that
20 you all are in agreement on?

21 MR. STILLEY: The defense -- where are the
22 defendants'? I'm happy with the defendants' set of
23 instructions -- not instructions, exhibits.

24 THE COURT: I've taken a look at this handbook. And
25 I'm looking at perhaps pages 1 through 27 to go back

1 excluding the procedures on the arbitration which comes
2 before the table of contents, and then sending back 1 through
3 27.

4 MR. SCHWARTZ: Judge, which -- unfortunately I think
5 ours is slightly different than his. Which pages are you
6 saying would be excluded?

7 THE COURT: 28 starts with finances.

8 MR. SCHWARTZ: Okay.

9 THE COURT: And the arbitration comes -- okay, hold
10 on a minute. As far as the defendants' exhibits,
11 Mr. Stilley, you said you have no objection to those? I want
12 to start sending something back to the jury so they can start
13 looking at them.

14 MR. STILLEY: Send the defendants' back, plaintiffs
15 have no objection to those.

16 THE COURT: Fine. Let's take those on back.

17 MR. SCHWARTZ: Judge, where is the part about the
18 arbitration that you said?

19 THE COURT: I think that almost came -- it seems
20 that mine after the --

21 MR. BRIGGS: It was after page 13. It was
22 interspersed.

23 THE COURT: This book here starts almost with
24 page 8.

25 MR. BRIGGS: The way he produced it, the pages were

1 not in the accurate order.

2 MR. SCHWARTZ: Why are we using one that's not an
3 accurate copy of the book?

4 MR. STILLEY: Well, if they've got a more accurate
5 copy, I want to see it. I thought this was the right one,
6 but the pagination was very confusing to me as well.

7 THE COURT: Well, we can put it in the correct
8 order. Or I can take this -- yeah, because the table of
9 contents is out of order.

10 MR. SCHWARTZ: There's some handwriting on his copy
11 of it. What is that? Why don't we use ours. This is one we
12 produced.

13 THE COURT: I may have two different pages or two
14 different paginations of 8 through 13. Yeah, 8 through 13,
15 I've got two sets of that, but they are different.

16 MR. SCHWARTZ: So we ought to be using -- this is
17 something that Marilyn Lueken apparently brought to court or
18 produced, it's not what our clients produced.

19 THE COURT: Okay. Then what about taking the
20 arbitration information out and going one -- going up to the
21 point of where it starts with the finances. And that seems
22 to be in the version I have, the finances start on page 28.

23 MR. STILLEY: Your Honor, let me say this. Your
24 Honor, let me say this. I understand that there is two
25 page 8s.

1 THE COURT: There are two pages 8 through 13.

2 MR. STILLEY: Right, but they are different pages.
3 And this is what my client was provided. That's what she was
4 given, and I think it's the relevant document to go back.

5 MR. SCHWARTZ: She didn't testify -- that's the
6 whole problem, no one said this copy is the copy of the
7 exhibit.

8 THE COURT: Well, let's not worry about that. If
9 they got the same information, what's the point? It just
10 makes sense to have pages that flow similarly. The concern
11 is the information in there, not that one person had it, one
12 person didn't.

13 MR. SCHWARTZ: Well, Your Honor, I have a
14 suggestion. There is a page 8 through 13 prior to the table
15 of contents are duplicative of pages 8 through 13 after the
16 table of contents. So I don't think we need to have them in
17 there twice.

18 MR. STILLEY: The problem with that, look at pages
19 eight after the first eight pages, look at that, it says
20 mailing packages.

21 THE COURT: Well, one starts with communication and
22 it has mailing packages under that.

23 MR. SCHWARTZ: I understand.

24 THE COURT: And it seems to have pretty much the
25 same thing.

1 MR. SCHWARTZ: I think that she must have had two
2 versions of this, and it somehow got jumbled. I'm not
3 accusing anybody of doing anything wrong, but it's just
4 jumbled.

5 THE COURT: Why don't you all get one version of
6 that together.

7 MR. SCHWARTZ: All right.

8 THE COURT: And let's send it back. I'm going to --
9 here, I'm going to give you this one back. I'm going to put
10 this other 8 through 13, I'm going to turn it sideways. I
11 don't know which was the first, and then I'll put this
12 arbitration. Because this arbitration stuff comes in --

13 MR. STILLEY: Your Honor, I have another solution I
14 can propose. Since this was a proposed exhibit for the
15 defense, how about we let them put theirs in and also put
16 this one in, because it's clear --

17 THE COURT: No, no, no, we're not going to do that.
18 We're going to send one back. There is only going to be one
19 set is going back, and the limitations as I have indicated.
20 There is going to be one version. These pages -- these pages
21 say the same thing as far as I can see other than one starts
22 with communication and has a preface before it gets to mail
23 and packages on communication, and the other does not. Now,
24 why don't you all look at these and get some understanding.
25 Let's look at those taking out the arbitration and stopping

1 when -- as it gets to finances, and we can go from there,
2 okay. And let me know when you got that done. Here is yours
3 here. I'm returning this. Whoever set that one up, there it
4 is. And I've turned the second set of 8 through 13 sideways.

5 MR. BRIGGS: Thank you, Judge.

6 THE COURT: We're not going to be sending two sets
7 back. Mr. Stilley, you have to make things more confusing.
8 Your solutions are more confusing.

9 (Court in recess from 12:34 p.m. until 12:47 p.m.)

10 THE COURT: Now, as far as the student handbook is
11 concerned, which is Exhibit 2, any problems with these pages,
12 we have them here, 1 through 27?

13 MR. STILLEY: Your Honor, I'm just going to reserve
14 my objection that the complete document that was submitted
15 should go back to the jury.

16 THE COURT: Well, there was certain portions of it
17 that talked about finances and so forth that I don't think
18 are appropriate. I mean, you're going to have to have some
19 specific reasons why you want the other portions back for me
20 to even consider. If you don't have any reasons other than
21 some general off-the-wall I want the whole thing, well, you
22 never talked about the whole thing with anybody, so I got no
23 reason to send it back.

24 MR. STILLEY: Your Honor, I'm talking about 80 pages
25 would have taken too much time.

1 THE COURT: Pardon?

2 MR. STILLEY: I'm talking about 80 pages I think
3 would have taken too much time.

4 THE COURT: It's not like that, it's in sections me
5 man, please. Come on, wake up. Stop being obstinate.
6 You're talking about arbitration. Why should they get
7 something on arbitration? Please. You're being a hindrance.
8 The book has sections to it. And the appendix, there was no
9 discussion about civil lawsuits. I mean, if we want to put
10 in girls' clothing, the directions.

11 MR. STILLEY: Your Honor --

12 THE COURT: What in there are you talking about?
13 You want Christian character and development, you want that
14 in?

15 MR. STILLEY: No, I want the whole thing. I
16 certainly want the part about their philosophy --

17 THE COURT: You don't want to discuss it. You're
18 talking about -- you're not any help at all because I'm not
19 sending the whole thing back. That's obvious.

20 MR. STILLEY: Can I swap out -- can I make a
21 proposal that would put in the part about civil lawsuits?

22 THE COURT: Oh, no, no, no.

23 MR. STILLEY: Can we have an instruction to the jury
24 that certain parts are being sent back so that they know that
25 that's not all?

1 THE COURT: Well --

2 MR. STILLEY: I'm just asking. I want a ruling.

3 THE COURT: I may do that, let them know that this
4 is all you're going to receive. Is there any other portion
5 of it that you want to see? I mean, a portion of it about
6 civil lawsuits? No. You know, you're just totally
7 unreasonable.

8 MR. STILLEY: Your Honor --

9 THE COURT: You're totally unreasonable. You know
10 that that's not appropriate for them to have. But, you know,
11 you just stretch too far. You have to understand that as an
12 officer of the court you got to at least be within some kind
13 of reason, you know, some kind of sanity about the process.

14 MR. STILLEY: I made my objections, and I feel like
15 it's a complete -- that it should go back as a complete
16 document.

17 THE COURT: Fine.

18 MR. STILLEY: And the objection was not made in
19 time.

20 THE COURT: Fine. That's enough. Fine.

21 Mr. Schwartz.

22 MR. SCHWARTZ: Your Honor, we don't object to that
23 portion of the document going back.

24 THE COURT: What about this portion about since that
25 was talked about, this Christian character development. It

1 starts on page 38.

2 MR. SCHWARTZ: Thirty-eight?

3 THE COURT: Or any other portions that were talked
4 about.

5 MR. SCHWARTZ: Thirty-eight?

6 THE COURT: Well, in this table of contents it talks
7 about Christian character development, and on the line it has
8 page 38.

9 MR. SCHWARTZ: I can look at that and see if --

10 MR. STILLEY: Yes, I think that that would be
11 important. We did talk about orientation.

12 THE COURT: Wait a minute. You made your objection
13 already. I'm about to cut you out here. You said all or
14 nothing, so come on.

15 MR. SCHWARTZ: Your Honor, I think what you have in
16 front of you is fine to go back. That's my response.

17 THE COURT: Well, I'm inclined to do this, just send
18 this portion back, which is page 1 through 27, which followed
19 the table of contents, and stop at the finances which start
20 on page 28.

21 Now, the two things, one of advising the jury that
22 these -- this is the portion of the handbook that The Court
23 will allow you to have. And perhaps redacting this table of
24 contents to stop after page -- after when it starts with
25 finances.

1 MR. SCHWARTZ: Or take it out altogether. I mean,
2 why do they need a table of contents?

3 THE COURT: Well, it may be helpful for them in
4 terms of getting to -- because I'm looking at not sending one
5 copy back but eight copies, so they can all refer to them
6 simultaneously if they so desire.

7 MR. STILLEY: Do we really have to redact that?

8 THE COURT: Well, it will leave out a lot of
9 speculation. The Court is going to redact it, this page.
10 I'm going to send this back, and I'll have a note with that.
11 And I'm going to draft a note right now to the jury. I'm
12 inclined to send this note back stating, "This is the part of
13 the student handbook that The Court will allow you to have.
14 Charles A. Shaw, Judge."

15 MR. STILLEY: Thank you, Judge.

16 MR. SCHWARTZ: That's all right.

17 THE COURT: Fine. So she's making the eight copies
18 as we talked about.

19 MR. SCHWARTZ: Your Honor, there's a couple other
20 exhibits that I think are at issue.

21 THE COURT: Oh, the exhibits that we talked about
22 redacting. What about those exhibits?

23 MR. SCHWARTZ: Well, I want to raise something about
24 this Exhibit 6, and I'll hand it to you.

25 THE COURT: Sure.

1 MR. SCHWARTZ: It has information that was not shown
2 to the jury. It has financial information about costs to go
3 to the school. I don't think it should go back to the jury.
4 This was something from the web site. And it was not
5 discussed or talked about in the case at all.

6 THE COURT: What about this? It was admitted. The
7 only thing it seems to have been relevant in here is the
8 philosophy.

9 MR. STILLEY: Your Honor, may I speak to that?

10 THE COURT: With the finance being -- maybe I think
11 perhaps with the finance, it can go back. So what's the
12 situation, Mr. Stilley?

13 MR. STILLEY: Your Honor, No. 1, plaintiffs'
14 position would be that there was no objection made to this
15 exhibit, whereas most of the exhibits were objected to. And
16 there was testimony about the annual and monthly rates.

17 THE COURT: Okay, fine. What about that? There's
18 been no objection to this. I guess the information you're
19 objecting to is the financial information, is that it,
20 Mr. Schwartz?

21 MR. SCHWARTZ: Well, as I said before, Judge, the
22 difference between admitting it and sending it back to the
23 jury. We don't dispute it is what it purports to be, but it
24 doesn't mean that the jury should be shown that.

25 THE COURT: Well, that was the discussion about this

1 medical escrow and so forth and so on.

2 MR. SCHWARTZ: Well, it was only brought up by the
3 defendant, and I think we had all of our objections sustained
4 to it. We didn't bring up anything about that. And there
5 was no relevance to anything about medical escrow. There was
6 no argument or claim that someone wasn't taken to a doctor or
7 dentist because there wasn't money in the medical escrow,
8 that was not testified to. There was no argument about that
9 whatsoever. I think that he may have asked somebody, did
10 they have to submit a \$500 medical escrow. But that says
11 what the tuition is and all this other stuff, which was not
12 testified to.

13 THE COURT: Well, there's been a lot -- there's been
14 a discussion just about everything on here other than the
15 annual tuition --

16 MR. STILLEY: Your Honor --

17 THE COURT: -- personal account, registration fee,
18 but the medical escrow was talked about. And --

19 MR. SCHWARTZ: We could just redact the tuition.

20 MR. STILLEY: Your Honor, if I could speak to that.

21 THE COURT: Sure.

22 MR. STILLEY: I asked Ms. Lueken how much she paid a
23 month. She said it was \$1,200. It's a matter of math to
24 figure out how much it is a year. Anybody can figure that
25 out.

1 MR. SCHWARTZ: Judge, I think you sustained the
2 objection to that question.

3 MR. STILLEY: That's not what I recall.

4 MR. SCHWARTZ: I mean, I know he asked her a number
5 of questions that we objected to and it was sustained on that
6 matter.

7 THE COURT: Well, I mean, there were significant
8 objections and attempts to keep out every effort you made
9 relative to this tuition. The Court had deemed it not
10 relevant to the lawsuit.

11 MR. STILLEY: Your Honor, let me say one other
12 thing. When Sam Gerhardt, I was able to get in in the
13 testimony what the amount was, and then the amount that he
14 said that was Mountain Park's costs. This was our cost, the
15 \$500. So -- and I got both of those numbers come up with the
16 difference of \$700 and that came in, but my recollection --

17 THE COURT: I'll tell you what, why don't I send
18 this back. There was no objection to it. I'm concerned
19 about it, but there's been a bunch of testimony around and
20 about it. I don't know it's going to make a world of
21 difference either way.

22 MR. SCHWARTZ: We object, Your Honor, based on the
23 prejudice.

24 THE COURT: Well, The Court is going to send it
25 back, Exhibit 6. Here is a note to go on top of those eight

1 student handbook packets. Here is six. What other exhibit?

2 MR. SCHWARTZ: Well, he has an Exhibit 69, which our
3 notes show was not admitted.

4 THE COURT: I don't recall any 69 being admitted.
5 How about yourself, Michelle, do you have a 69?

6 THE CLERK: I think maybe it was identified and not
7 admitted. Cathy has a check mark by it. I would have to see
8 what that indicated. I know it was identified.

9 MR. SCHWARTZ: I don't think it was identified,
10 but I don't think --

11 THE COURT: What is Exhibit 69?

12 MR. SCHWARTZ: It's a Mountain Park Baptist Boarding
13 Academy -- what do you call this -- enrollment form. And I
14 recall there were objections on this, Judge. And I think you
15 would not let him get into this. It has legal jargon on it.
16 Because this was about the claim that was dismissed, about
17 the fraud claim, and we objected to getting into that.

18 THE COURT: Why do you want this to go back to the
19 jury, Mr. Stilley?

20 MR. STILLEY: Your Honor, I thought the testimony
21 was about that. I thought we had testimony about various
22 aspects of that. For example, Sam Gerhardt testified you had
23 to keep the student in for a year, that the term was a year.
24 We've got other documents that say --

25 THE COURT: Well, that's what I'm saying, what is in

1 here that you want in?

2 MR. STILLEY: Well, I'd really like the whole thing,
3 but if --

4 MR. SCHWARTZ: Judge, all we have to determine --

5 THE COURT: You really want this agreement in, is
6 that what you want? Is that it? Why don't you just come on
7 up with it? You will not be straightforward. You become an
8 untrustworthy person. Just come on straight with it. Why
9 you got to beat around the bush? You know it's coming out as
10 to what your play is, and then you become untrustworthy when
11 you want to be straightforward.

12 MR. STILLEY: Judge.

13 THE COURT: No, I don't want to hear it. Okay,
14 let's look at this. This is what you want, you want the
15 applicants are only admitted for the express -- on the
16 express condition that they should remain at the school until
17 the end of the written agreement unless suspended or allowed
18 to withdraw because of sustained illness, the parent and
19 guardian leaves the school because of voluntary withdrawal --
20 no part of the fee shall be refunded.

21 MR. SCHWARTZ: Your Honor, if it wasn't admitted,
22 it's really not an issue.

23 THE COURT: Yeah. I'm not going to allow this in.
24 It wasn't admitted. I think you referred to it and you were
25 trying to get to this agreement portion, which is about the

1 fees not being refunded, so I'm not going to allow that.

2 That's refused.

3 MR. STILLEY: Your Honor, can we get the court
4 reporter to do a little search and see if it was admitted or
5 not?

6 THE COURT: We've done all the searching we were
7 going to do, because there was an objection relative to this
8 agreement portion, and that's not appropriate to go back. It
9 seems obvious to The Court since you won't acknowledge it,
10 because I think most of the other information is not really
11 significant other than in the agreement they don't get their
12 money back if the child leaves school on the parent --
13 because the parents decide that that is the thing to do, that
14 they won't get any refund on the money, or if they owe money,
15 they'll still have to pay it for the remainder of the
16 agreement. So that's out. No, it was objected to before.
17 The exhibit was never admitted. The exhibit was never
18 admitted. We had difficulty with No. 2 because it was
19 admitted even though I was suggesting at the time that there
20 should be limitations, and that to expedite this matter,
21 which was really much longer than it should have been, so
22 that's the end of that. What else? Any other exhibits?

23 MR. STILLEY: So the basis for that --

24 THE COURT: It was not admitted.

25 MR. STILLEY: Okay. That's the sole basis, correct?

1 THE COURT: Yes. I'm not going over all this. I'm
2 through with it. Any other exhibits?

3 MR. STILLEY: Okay, we've got 63-1, 63-2, 63-3, and
4 63-4.

5 MR. SCHWARTZ: Your Honor, I believe 63-1 and 63-2
6 you instructed him that he could only admit certain portions
7 that were discussed, and he'd have to redact the rest.

8 THE COURT: Let me see. What are those, the
9 letters?

10 MR. SCHWARTZ: Yes. These are references, notes by
11 Brother Gerhardt and --

12 THE COURT: Hold on just a minute. Go ahead,
13 Mr. Schwartz.

14 MR. SCHWARTZ: There were some notes written by
15 Brother Gerhardt and there was some testimony from the
16 witness about the notes. And as I recall the ruling was that
17 only the portions that were discussed by the witness would be
18 allowed to go to the jury. And I specifically remember us
19 talking about redacting, which he hasn't done.

20 THE COURT: I remember that that was the ruling at
21 the time, but what in here is objectionable? We've got the
22 other letters in. And even though I indicated that at that
23 time, I don't know what's in here that's objectionable.

24 MR. SCHWARTZ: Your Honor, it's full of hearsay, and
25 one of them is I think written by the student and one written

1 by the parent.

2 THE COURT: All I got -- 63-1 here is written by the
3 parent.

4 MR. SCHWARTZ: You know, Judge, this is -- Shari
5 Lueken is not even in the case anymore.

6 THE COURT: Oh, yes. What's the point? She's out
7 of the case.

8 MR. STILLEY: Judge, that was admitted for the
9 purpose of -- it was admitted in the case, and when it's
10 admitted, it's admitted unless there's some restriction.

11 THE COURT: Well, that was admitted before she was
12 dismissed from the case. And since she's no longer in the
13 case.

14 MR. STILLEY: Your Honor, let me say this.
15 Credibility is the issue right now, who we're going to
16 believe. And what the defendants are saying is that we just
17 outloved these kids. That's what the orientation guides are
18 taught to do, just outlove your student. And we just build
19 them up. And that shows that that's a lie, they don't build
20 these kids up.

21 MR. SCHWARTZ: We don't object to these, the rest of
22 these.

23 THE COURT: Well, those letters from Shari Lueken
24 and the parents are not going back. She's out of the case.
25 That's it. What are the others you have no problem with?

1 We'll send those back. You have no problem with these?

2 MR. SCHWARTZ: No problem.

3 THE COURT: Fine, then I'll give them. And what are
4 those exhibits, three, four, five?

5 THE CLERK: And then I have six.

6 MR. SCHWARTZ: And there were two others that were
7 there.

8 THE COURT: Hand them to them so we can put on the
9 record what they are.

10 MR. SCHWARTZ: It's Plaintiffs' Exhibit 3, 4, 5,
11 63-3, 63-4, and then you're allowing six over our objection.

12 THE COURT: Fine.

13 MR. STILLEY: Your Honor, can we also have a note to
14 the jury that The Court just ruled that two letters won't go
15 back?

16 THE COURT: No.

17 (Court in recess from 1:10 p.m. until 2:42 p.m.)

18 THE COURT: Well, we understand they have a verdict.
19 But counsel, come up for just a moment.

20 (The following proceedings were held at the bench
21 and outside the hearing of open court:)

22 THE COURT: I don't know what their verdict is. I
23 just wanted to advise you they did have a question, however,
24 that I answered. And the question was something to the
25 effect was that if we come back with a verdict for the

1 plaintiffs, but give them no money, what happens. And I just
2 responded you must be guided by the instructions.

3 MR. SCHWARTZ: Okay.

4 THE COURT: So I really gave them no answer. So
5 maybe that's what happened. I have no idea. We'll see.
6 Okay.

7 (The following proceedings continued within the
8 hearing of the jury:)

9 THE COURT: Bring the jury on. Good afternoon,
10 ladies and gentlemen of the jury. Mr. Palmer, has the jury
11 reached a verdict?

12 JUROR PALMER: Yes, Your Honor, we have.

13 THE COURT: Very well. Would you give it to Cathy,
14 please. Clerk, publish the verdict, please.

15 THE CLERK: Verdict A, on the claim of Plaintiff
16 Jamie Kaufmann Woods for battery against Defendant Andrea
17 Hill, we the undersigned jurors find in favor of Andrea Hill.

18 On the claim of Plaintiff Jamie Kaufmann Woods for
19 battery against Defendant Betty Wills, we the undersigned
20 jurors find in favor of Jamie Kaufmann Woods. We the
21 undersigned jurors assess the damages of Plaintiff Jamie
22 Kaufmann Woods for battery by Betty Wills at zero.

23 On the claim of Plaintiff Jamie Kaufmann Woods for
24 negligence against Defendant Betty Wills, we the undersigned
25 jurors find in favor of Betty Wills.

1 And this Verdict A is signed by foreperson Perry
2 Patterson, dated October 15 -- December 15, 2005.

3 Verdict B: On the claim of Plaintiff Tracey Brazil
4 Ozuna for negligence against Defendant Betty Wills, we the
5 undersigned jurors find in favor of Betty Wills.

6 On the claim of Tracey Brazil Ozuna for negligence
7 against Defendant Deborah Gerhardt, we the undersigned jurors
8 find in favor of Deborah Gerhardt.

9 On the claim of Plaintiff Tracey Brazil Ozuna for
10 battery against Defendant Deborah Gerhardt, we the
11 undersigned jurors find in favor of Deborah Gerhardt.

12 And it's signed again by foreperson Perry Patterson,
13 December 15, 2005.

14 Verdict C: On the claim of Plaintiff Erika Teasley
15 for negligence against Defendant Deborah Gerhardt, we the
16 undersigned jurors find in favor of Deborah Gerhardt.

17 Again, signed by foreperson Perry Patterson, dated
18 December 15, 2005.

19 THE COURT: Does either party wish to have the jury
20 polled?

21 MR. STILLEY: Yes, Your Honor.

22 THE COURT: Clerk, poll the jury.

23 (The jury was polled and the verdicts were
24 unanimous.)

25 THE COURT: Ladies and gentlemen of the jury, I want

1 to thank you for your time, attention, and patience. The
2 case went a little bit longer than we thought, but not overly
3 long, at least in terms of what you were told.

4 And as far as the admonition is concerned, that is
5 lifted. You can discuss this case as fully and freely as you
6 choose with anyone you choose to discuss it with. The
7 lawyers are not allowed to ask you about the case, but if you
8 choose to discuss this with them or anyone else, that's
9 entirely up to you.

10 So thank you again for your time, attention, and
11 patience. You're excused. Happy holidays.

12 (Jury excused.)

13 THE COURT: Is there anything else?

14 MR. STILLEY: I think we're through, Judge, at this
15 point.

16 THE COURT: I think we're through. Happy holidays
17 everyone.

18 MR. SCHWARTZ: Thank you, Judge.

19 MR. BRIGGS: Thank you, Judge.

20 THE COURT: Sure.

21 (Court in recess at 2:47 p.m.)
22
23
24
25

C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 92 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this _____ day of _____, 2006.

/s/ Susan R. Moran
Registered Merit Reporter